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Court of Appeals

OF THE STATE OF NEW YORK.

GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WAAL and DEMOSTHENES LOIZIDES, co-partners trading under the name of THE WORLD CAFETERIA,

Plaintiffs-Respondents,

against

WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES UNION, LOCAL 302, an unincorporated association having more than seven members, individually and as President of said union,

Defendants-Appellants.

No. 3048
1939

Statement Under Rule 234.

This action was commenced by the service of the summons and complaint on defendant on May 3, 1939. Issue was joined by the service of defendant's answer on May 19, 1939.

Plaintiffs appeared by David L. Delman. Defendant appeared by Boudin, Cohn & Glickstein.

The full names of the parties appear above. There has been no change of parties or of attorneys herein.

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Notice of Appeal to Appellate Division.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF THE BRONX.

GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WAAL and DEMOSTHENES LOIZIDES, co-partners trading under the name of THE WORLD CAFETERIA,

5 Plaintiffs,

against

WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES UNION, LOCAL 302, an unincorporated association having more than seven members, individually and as President of said union,

Defendants.

Sir:

PLEASE TAKE NOTICE that the defendants herein hereby appeal to the Appellate Division of the 6 Supreme Court, First Department, from the final judgment herein, dated the 19th day of June, 1939, and entered in the office of the Clerk of the County of the Bronx on the 20th day of September, 1939, enjoining and restraining the defendants from picketing the plaintiffs' place of business, and that

this appeal is taken from the whole of said judgment and from each and every part thereof.

Dated, New York, September 21, 1939.

Yours, etc.,

BOUDIN, COHN & GLICKSTEIN,
Attorneys for Defendants,
Office and Post Office Address,
20 West 43rd Street,
Borough of Manhattan,
City of New York.

8

To:

DAVID L. DELMAN, Esq.,
Attorney for Plaintiffs,
261 Broadway,
New York City.

9

10

Summons.

SUPREME COURT
OF THE STATE OF NEW YORK,
COUNTY OF BRONX.

GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WAAL and DEMOSTHENES LOIZIDES, co-partners trading under the name of THE WORLD CAFETERIA,

Plaintiffs,

against

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WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES UNION, LOCAL 302, an unincorporated association having more than seven members, individually and as President of said union,

Defendants.

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

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Dated, New York, May 3, 1939.

DAVID L. DELMAN,
Attorney for Plaintiffs,
Office and Post Office Address,
261 Broadway,
Borough of Manhattan.

Complaint.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

[SAME TITLE.]

Plaintiffs, complaining of the defendants, by David L. Dehman, their attorney, respectfully allege:

FIRST: That the defendant Cafeteria Employees Union, Local 302, is a voluntary unincorporated association of more than seven members, and the defendant William Mesevich is its President.

SECOND: That the plaintiffs are partners and owners of the cafeteria known as The World Cafeteria, located at 838 East 180th Street, Borough of Bronx, City of New York.

THIRD: That individuals under the control of the defendants have been picketing said plaintiffs' cafeteria, bearing false and misleading signs that tend to create the impression that the plaintiffs are unfair to organized labor, and also tend to create the impression in the eyes of the public that those pickets were previously employed by the plaintiffs.

FOURTH: That those signs carried by the pickets are untrue and known to the defendants to be untrue, because there are no employees at the place of business of the plaintiffs and the plaintiffs are not unfair to organized labor.

FIFTH: That there is no "labor dispute" between the plaintiffs and any employees, and no

employee of the plaintiffs has ceased working because of any dispute as to the rate of wages or any other acts of the plaintiffs.

SIXTH: That the plaintiffs are the sole owners of The World Cafeteria and do all the work in connection with said cafeteria without any outside assistance.

SEVENTH: That no strike has ever been called at the plaintiffs' place of business.

EIGHTH: That the plaintiffs, as a result of the unlawful practices of the defendants, have suf-
17 fered, suffer and will suffer irreparable damage, and they may find their business ruined without any adequate remedy at law, and must, therefore, seek this equitable relief in order to prevent the defendants from continuing their unlawful practices.

WHEREFORE, plaintiffs demand judgment against the defendants:

(a) That the defendants and their agents, servants and employees and those acting under their direction or control, be enjoined permanently and during the pendency of this action from stationing any pickets at or near
18 the plaintiffs' place of business as above described, and from interfering with the plaintiffs' customers who may seek to enter the plaintiffs' place of business or prevent by coercion or in any wise, any customers of the plaintiffs seeking to enter plaintiffs' place of business, or from interfering in any wise with the plaintiffs' business.

(b) That the defendants pay to the plaintiffs such damages as shall be proven at the trial or as to this Court may seem fair and adequate.

(c) That the plaintiffs have such other and further and different relief as to the Court may seem proper, together with the costs and disbursements of this action.

DAVID L. DELMAN,
Attorney for Plaintiffs,
Office & P. O. Address,
261 Broadway, 20
Borough of Manhattan,
City of New York.

(Verified May 3, 1939.)

Answer.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

[SAME TITLE.] 21

The defendant William Mesevich, answering the complaint of the plaintiffs herein, by his attorneys, Boudin, Cohn & Glickstein, respectfully shows to this Honorable Court and alleges:

I. He denies each and every allegation contained in the paragraph or section of the said complaint marked or numbered "Second".

II. He denies each and every allegation contained in the paragraph or section of the said complaint marked or numbered "Third", except that he admits that the defendant union has been peacefully and lawfully picketing the cafeteria known as the World Cafeteria.

III. He denies each and every allegation contained in the paragraphs or sections of the said complaint marked or numbered "Fourth", "Fifth", "Sixth", and "Eighth".

FURTHER ANSWERING THE SAID COMPLAINT, AND AS A FIRST SEPARATE AND COMPLETE DEFENSE THERETO, THE DEFENDANT ALLEGES:

IV. That the enterprise conducted and carried on under the name of World Cafeteria is the result of an arrangement, scheme, plan, design, and conspiracy on the part of the plaintiffs, and particularly on the part of the plaintiff Demosthenes Loizides to circumvent the laws of the State of New York by creating a fictitious partnership for the purpose of representing that he employs no help and thereby to gain immunity from the statutes of the State of New York with respect to labor and social legislation, and further, to avoid an employer's financial responsibility as required by the laws of the State of New York, particularly those laws dealing with labor, workmen's compensation and unemployment insurance.

V. That the plaintiffs herein are not actually copartners but that the enterprise known as the World Cafeteria is owned, operated and controlled by the plaintiff Demosthenes Loizides.

VI. That by reason thereof, the plaintiffs have and are attempting to perpetrate a fraud, and have come into a court of equity with unclean hands and are consequently entitled to no relief.

FURTHER ANSWERING THE SAID COMPLAINT, AND AS A SECOND, SEPARATE AND COMPLETE DEFENSE THERETO, THE DEFENDANT ALLEGES:

VII. That an actual controversy and labor dispute exists between the plaintiff Demosthenes Loizides and the defendant union, and that such controversy and labor dispute is concerned with, among other things, the question of social and economic conditions in the restaurant industry in the City of New York, including standards of employment and working conditions.

VIII. That as the result of a concealed relationship of employer and employee existing between and among the plaintiffs, and as a result of the failure on the part of the plaintiff Demosthenes Loizides to comply with the statutes of the State of New York with respect to employment of labor, and as a result of the fraudulent plans, scheme and design of the plaintiffs, said plaintiffs are enabled to unfairly compete with enterprises of a similar kind and nature and to undermine conditions of labor regulated by the statutes of the State of New York and social and economic conditions and to thereby create chaos and unemployment in the restaurant industry.

FURTHER ANSWERING THE SAID COMPLAINT, AND AS A THIRD, SEPARATE AND COMPLETE DEFENSE THERETO, THE DEFENDANT ALLEGES:

IX. That the dispute between the plaintiffs and the defendant is concerned with the terms and con-

ditions of employment and concerns the association or representation of persons in fixing, negotiating, maintaining, changing, or seeking to arrange terms or conditions of employment and concerns employment relations.

X. That by reason thereof the within action involves a labor dispute within Section 876-a of the Civil Practice Act.

XI. That the complaint herein fails to comply with said Section 876-a of the Civil Practice Act and by reason thereof is insufficient and should be dismissed.

FURTHER ANSWERING THE SAID COMPLAINT, AND AS A FOURTH, SEPARATE AND COMPLETE DEFENSE THERETO, SAID DEFENDANT ALLEGES:

XII. That the plaintiffs herein have not sought or in fact negotiated for the settlement of the labor dispute herein in good faith and have made no bona fide efforts to effect such settlement, and in fact have not made every reasonable effort to settle the dispute either by negotiation or with the aid of any machinery or mediation provided for by law.

WHEREFORE, said defendant demands judgment herein dismissing the complaint, together with the costs and disbursements of this action.

BOUDIN, COHN & GLICKSTEIN,
Attorneys for Defendant William Mesevich,
Office & P. O. Address,
20 West 43nd Street,
Borough of Manhattan,
City of New York.

(Verified May 18, 1939.)

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Plaintiffs' Proposed Findings.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

[SAME TITLE.]

The above entitled action having duly come on to be heard before me at a Special Term for Trials of this Court, held in and for the County of the Bronx, on the 14th day of June, 1939, and the plaintiffs having appeared by David L. Delman, 32
Esq., their attorney, and the defendants having appeared by Boudin, Cohn & Glickstein, Esqs. (Irving R. Feinberg, of counsel) and the evidence of both sides having been adduced, and due deliberation having been had thereon, and after hearing David L. Delman, Esq., attorney for the plaintiffs, and Boudin, Cohn & Glickstein, Esqs., attorneys for the defendants, I do hereby find and decide as follows:

FINDINGS OF FACT.

FIRST: That the defendant Cafeteria Employees Union, Local 302, is a voluntary unincorporated association of more than seven members, and the 33
defendant William Mesevich is its President.

Found—T. A. L., J. S. C.

SECOND: That the plaintiffs are partners and owners of the cafeteria known as the World Cafeteria, located at 838 East 180th Street, Borough of Bronx, City of New York.

Found—T. A. L., J. S. C.

34 *Plaintiffs' Proposed Findings.*

THIRD: That the partnership formed by the plaintiffs is a valid partnership.

Found—T. A. L., J. S. C.

FOURTH: That individuals under the control of the defendants have been picketing said plaintiffs' cafeteria bearing false and misleading signs that tend to create the impression that the plaintiffs are unfair to organized labor, and also tend to create the impression in the eyes of the public that these pickets were previously employed by the plaintiffs. Said picketing began on or about
35 April 14, 1939.

Found—T. A. L., J. S. C.

FIFTH: That those signs carried by the pickets are untrue and known to the defendants to be untrue, because there are no employees at the place of business of the plaintiffs and the plaintiffs are not unfair to organized labor.

Found—T. A. L., J. S. C.

SIXTH: That there is no "labor dispute" between the plaintiffs and any employees, or between the plaintiffs and the defendants, within the purview of Section 876-a of the Civil Practice
36 Act, and no employee of the plaintiffs has ceased working because of any dispute as to the rate of wages or any other acts of the plaintiffs.

Found—T. A. L., J. S. C.

SEVENTH: That the plaintiffs are the sole owners of The World Cafeteria and do all the work in connection with said cafeteria without any outside assistance.

Found—T. A. L., J. S. C.

EIGHTH: That no strike has ever been called at the plaintiffs' place of business.

Found—T. A. L., J. S. C.

NINTH: That the plaintiffs, as a result of the unlawful practices of the defendants, and the individuals under their control, have suffered damage, and unless the defendants are restrained from continuing their unlawful practices, the plaintiffs would suffer irreparable damage and may find their business ruined without any adequate remedy at law.

Found—T. A. L., J. S. C. 38

TENTH: That the pickets in front of plaintiffs' place of business approached prospective customers of the plaintiffs and told them that the plaintiffs' restaurant was giving bad food, and that by patronizing said plaintiffs' restaurant they were aiding the cause of Fascism.

Found—T. A. L., J. S. C.

ELEVENTH: That the said pickets directed customers about to enter the plaintiffs' place of business to a cafeteria across the street, a competitor of the plaintiffs.

Found—T. A. L., J. S. C. 39

TWELFTH: That the partnership herein was formed on or about April 22, 1939, and all the plaintiffs signed the partnership agreement.

Found—T. A. L., J. S. C.

THIRTEENTH: That a certificate doing business as The World Cafeteria was duly filed by the plaintiffs in the office of the County Clerk of the County of Bronx.

Found—T. A. L., J. S. C.

CONCLUSIONS OF LAW.

1. That the plaintiffs are entitled to a permanent injunction, restraining and enjoining the defendants and their agents, servants and employees and those acting under their direction or control, from stationing any pickets at or near the plaintiffs' place of business at 838 East 180th Street, Borough of the Bronx, City of New York, and from interfering with the plaintiffs' customers who may seek to enter their place of business, or to prevent by coercion or otherwise any customers of the plaintiffs seeking to enter plaintiffs' place of business, and from interfering in any other wise with the plaintiffs' business.

Found—T. A. L., J. S. C.

2. That the plaintiffs are entitled to the costs and legal disbursements of this action.

Refused—T. A. L., J. S. C.

3. Let a judgment be entered accordingly.

Found—T. A. L., J. S. C.

Dated, New York, June , 1939.

J. S. C.

43

Defendant's Proposed Findings.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

[SAME TITLE.]

The above entitled action having duly come on to be heard before me at a Special Term for Trials of this Court, held in and for the County of Bronx, on the 14th day of June, 1939, and the plaintiffs having appeared by David L. Delman, Esq., their 44
attorney, and the defendant having appeared by Boudin, Cohn & Glickstein, Esqs., his attorneys (Irving R. Feinberg of counsel), and the evidence of both sides having been adduced, and due deliberation having been had thereon, I do hereby find and decide as follows:

FINDINGS OF FACT.

FIRST: That the Cafeteria Employees Union, Local 302, is a voluntary unincorporated association, consisting of a labor union and is affiliated with the American Federation of Labor, and the defendant William Mesevich is the president 45
thereof.

Found—T. A. L., J. S. C.

SECOND: That the Cafeteria Employees Union, Local 302, is composed of and has jurisdiction over men and women employed in the cafeteria industry in the City of New York.

Found—T. A. L., J. S. C.

46 *Defendant's Proposed Findings.*

THIRD: That for some time during the year 1933 until February 11, 1939, the plaintiff Demosthenes Loizides owned and operated a cafeteria at 838 East 180th Street, in the Borough of Bronx, City of New York, under the name of the World Cafeteria; that all of the remaining plaintiffs were during said period employed in said cafeteria by the said Demosthenes Loizides.

Refused—T. A. L., J. S. C.

FOURTH: That the World Cafeteria was closed on or about February 11, 1939, for alterations and
47 was reopened on or about April 14, 1939; that upon the reopening, all of the former employees in said cafeteria, being the plaintiffs in this action, continued to be employed in the cafeteria in the capacity of workers, and that the plaintiff Demosthenes Loizides continued to be the sole owner and operator thereof.

Refused—T. A. L., J. S. C.

FIFTH: That prior to the reopening of said World Cafeteria on or about the 14th day of April, 1939, the plaintiff Demosthenes Loizides was approached by a representative of the Cafeteria Employees Union, Local 302, and requested to em-
48 ploy union help; that Demosthenes Loizides refused to discuss the question of employing union help with the representative of the union, and refused to deal or negotiate with the union.

Refused—T. A. L., J. S. C.

SIXTH: That on or about the 15th day of April, 1939, a picket line was established by the Cafeteria Employees Union, Local 302, in front of the

World Cafeteria; and that said picket line consisted of a member of the union, walking to and fro in front of said cafeteria, bearing a sign upon which it was stated that the World Cafeteria was unfair to union labor, in that it refused to employ members of the Cafeteria Employees Union, Local 302.

Found—T. A. L., J. S. C.

SEVENTH: That at no time did more than one person picket in front of the World Cafeteria at any time.

Found—T. A. L., J. S. C. 50

EIGHTH: That the picketing of the World Cafeteria was at all times orderly and peaceful.

Found—T. A. L., J. S. C.

NINTH: That the statement on the sign carried by the picket, and the statements made by the picket have at all times been true.

Refused—T. A. L., J. S. C.

TENTH: That no acts of violence have been threatened or committed by the defendant union.

Found—T. A. L., J. S. C. 51

ELEVENTH: That the plaintiff Gus Angelos performed the duties of a chef in said cafeteria at the time of its reopening and continued to do so to the date of trial; that the plaintiff John Harris performed the duties of night manager, counterman and dishwasher in said World Cafeteria at the time of its reopening and continued to do so to the date of trial; that the plaintiff Lucas Harris

52 *Defendant's Proposed Findings.*

performed the duties of counterman in said cafeteria on the date of its reopening and continued to do so to the date of trial; that the plaintiff Nick Fellougis performed the duties of night kitchenman, dishwasher and counterman in said cafeteria on the date of its reopening and continued to do so until the date of trial; that the plaintiff Harry Galatis performed the duties of dishwasher and counterman in the said cafeteria on the date of its reopening and continued to do so to the date of trial; that the plaintiff Mary Waal performed the duties of waitress in said cafeteria
53 upon the date of its reopening and continued to do so to the date of trial.

Refused—T. A. L., J. S. C.

TWELFTH: That the plaintiff Demosthenes Loizides at all times from the date of the reopening of the cafeteria to the present date performed and still continues to perform the duties of manager of said cafeteria, does all of the buying thereof, fixes the prices to be charged for the merchandise, and is otherwise in control of the operations of said cafeteria.

Refused—T. A. L.; J. S. C.

54 THIRTEENTH: That on or about the 22nd day of April, 1939, the plaintiff Demosthenes Loizides and the remaining plaintiffs herein, being the employees in the World Cafeteria entered into and executed a fictitious agreement, wherein they purported to form a copartnership arrangement among themselves.

Refused—T. A. L., J. S. C.

55

FOURTEENTH: That said arrangement among the plaintiffs was the result of a scheme and conspiracy on the part of the plaintiff Demosthenes Loizides to circumvent the laws of the State of New York for the purpose of representing that he employs no help, and thereby to gain immunity from the laws of the State of New York with respect to labor and social legislation and with respect to workmen's compensation and unemployment insurance.

Refused—T. A. L., J. S. C.

FIFTEENTH: That the plaintiffs are not actually copartners; that the relationship of employer and employee exists among the plaintiffs. 56

Refused—T. A. L., J. S. C.

SIXTEENTH: That said fictitious arrangement among the plaintiffs was entered into solely for the purpose of avoiding the unionization of the World Cafeteria and of applying to this Court for an injunction restraining the defendant union from picketing said cafeteria.

Refused—T. A. L., J. S. C.

SEVENTEENTH: That the plaintiffs herein, with the exception of the plaintiff Demosthenes Loizides, have obtained no permit from the Board of Health of the City of New York, permitting them to conduct and operate a restaurant or cafeteria, but that the only permit obtained from the Board of Health was that obtained by the plaintiff Demosthenes Loizides prior to April 15, 1939, and that said permit has not been assigned by said plaintiff to the remaining plaintiffs. 57

Refused—T. A. L., J. S. C.

58 *Defendant's Proposed Findings.*

EIGHTEENTH: That all of the fixtures and property of the World Cafeteria are owned by and remain in the name of the plaintiff Demosthenes Loizides; that the title to these fixtures has not been assigned to the remaining plaintiffs, nor any attempt made to do so.

Refused—T. A. L., J. S. C.

NINETEENTH: That the plaintiffs John Harris and Lucas Harris are related to the plaintiff Demosthenes Loizides.

Refused—T. A. L., J. S. C.

59

TWENTIETH: That upon the execution of said fictitious arrangement no money was invested in the business of the World Cafeteria by any of the plaintiffs, and that the only money or property invested in said business was that invested originally by the plaintiff Demosthenes Loizides prior to April 15, 1939.

Refused—T. A. L., J. S. C.

TWENTY-FIRST: That upon the execution of said fictitious arrangement no sums of money were paid to the plaintiff Demosthenes Loizides by the remaining plaintiffs.

60

Refused—T. A. L., J. S. C.

TWENTY-SECOND: That after the execution of said fictitious arrangement the plaintiffs herein continued to perform the same functions and duties in the World Cafeteria which they had previously performed.

Refused—T. A. L., J. S. C.

TWENTY-THIRD: That after the execution of the fictitious arrangement among the plaintiffs, the plaintiffs continued to receive weekly from the World Cafeteria the identical sums of money which they had previously received weekly prior to April 22, 1939.

Refused—T. A. L., J. S. C.

TWENTY-FOURTH: That on or about and after April 22, 1939, no new bank account was opened by the World Cafeteria, and that the checks for said business continued to be signed by the plaintiff Demosthenes Loizides, that none of the remaining plaintiffs herein, with the exception of the plaintiff Lucas Harris who is a relative of the plaintiff Demosthenes Loizides, are authorized to sign checks on behalf of the World Cafeteria. 62

Refused—T. A. L., J. S. C.

TWENTY-FIFTH: That the plaintiffs herein carry no workmen's compensation insurance.

Found—T. A. L., J. S. C.

TWENTY-SIXTH: That the plaintiffs herein pay no social security taxes.

Found—T. A. L., J. S. C. 63

TWENTY-SEVENTH: That the plaintiffs herein pay no unemployment insurance taxes.

Found—T. A. L., J. S. C.

TWENTY-EIGHTH: That all of the plaintiffs herein are members of the Greek race.

Refused—T. A. L., J. S. C.

64 *Defendant's Proposed Findings.*

TWENTY-NINTH: That the public officers charged with the duty to protect the property of the plaintiffs and of the World Cafeteria have been able to furnish adequate protection to said property.

Refused—T. A. L., J. S. C.

THIRTIETH: That the lease for the premises occupied by the World Cafeteria is in the name of the plaintiff Demosthenes Loizides, and no attempt has been made by said plaintiff to assign said lease to any of the remaining plaintiffs herein.

65 *Refused—T. A. L., J. S. C.*

THIRTY-FIRST: That none of the fire insurance policies covering the premises known as the World Cafeteria are in the names of any of the plaintiffs herein, with the exception of the plaintiff Demosthenes Loizides.

Found—T. A. L., J. S. C.

THIRTY-SECOND: That on or about the 26th day of October, 1936, a trade name certificate was filed by the plaintiff Demosthenes Loizides in the office of the Clerk of the County of Bronx, of the City of New York, to do business under the name of the 66 World Cafeteria, and that no notice of cancellation of said certificate has been filed to date, and that said certificate remains on file and in full force and effect.

Refused—T. A. L., J. S. C.

THIRTY-THIRD: That the picket on the picket line in front of the World Cafeteria requested the public not to patronize said cafeteria since it was

unfair to union labor, and made no other statements or representations.

Found—T. A. L., J. S. C.

THIRTY-FOURTH: The plaintiffs herein have refused to discuss this dispute with the defendant union and have refused to discuss with the union the maintenance of union conditions of employment in the World Cafeteria.

Refused—T. A. L., J. S. C.

THIRTY-FIFTH: That the plaintiffs have made no reasonable efforts to settle the dispute with the defendants either by negotiation or with the aid of the machinery of mediation and voluntary arbitration provided for by law. 68

Refused—T. A. L., J. S. C.

THIRTY-SIXTH: That no unlawful acts or any breach of a contract, not contrary to public policy, have been threatened or committed, and no such acts or breach will be executed if not restrained.

Refused—T. A. L., J. S. C.

THIRTY-SEVENTH: That no substantial and irreparable injury to the plaintiffs' property will follow if the relief requested is not granted. 69

Refused—T. A. L., J. S. C.

THIRTY-EIGHTH: That greater injury will be inflicted upon the defendants by the granting of the relief requested than will be inflicted upon the plaintiffs by the denial thereof.

Refused—T. A. L., J. S. C.

70 *Defendant's Proposed Findings.*

THIRTY-NINTH: That the dispute herein concerns terms and conditions of employment, as well as the association or representation of persons in fixing, maintaining, changing or seeking to arrange terms or conditions of employment, and concerns employment relations.

Refused—T. A. L., J. S. C.

FORTIETH: That the dispute herein arises out of the respective interests of employer and employee.

Refused—T. A. L., J. S. C.

71 FORTY-FIRST: That the plaintiffs herein are attempting to perpetrate a fraud.

Refused—T. A. L., J. S. C.

CONCLUSIONS OF LAW.

1. That the dispute between the plaintiffs and the defendants is a labor dispute within the meaning of Section 876-a of the Civil Practice Act.

Refused—T. A. L., J. S. C.

2. That the picketing conducted by the defendant union is lawful as an incident of a labor dispute between the plaintiffs and the defendant, and
72 is carried on for the purpose of raising labor standards in the cafeteria industry and in the City of New York, and of installing in the place of business conducted by the plaintiff Demosthenes Loizides union standards and conditions of work.

Refused—T. A. L., J. S. C.

Defendant's Proposed Findings. 73

3. That the defendant is entitled to an order dismissing the complaint herein with costs.

Refused—T. A. L., J. S. C.

4. I hereby direct that judgment be entered accordingly.

Refused—T. A. L., J. S. C.

Dated, New York, June , 1939.

Justice of the Supreme Court
of the State of New York. 74

Decision.

SUPREME COURT

OF THE STATE OF NEW YORK.

County of Bronx.

[Same Title.]

The above entitled action having duly come on to be heard before me at a Special Term for Trials of this Court, held in and for the County of the Bronx, on the 14th day of June, 1939, and the plaintiffs having appeared by David L. Delman, Esq., their attorney, and the defendants having appeared by Boudin, Cohn & Glickstein, Esqs. (Irving B. Feinberg, of counsel), and the evidence of both sides having been adduced, and due deliberation having been had thereon, and after hear- 75

ing David L. Delman, Esq., attorney for the plaintiffs, and Boudin, Cohn & Glickstein, Esqs., attorneys for the defendants, I do hereby find and decide as follows:

FINDINGS OF FACT.

FIRST: That the defendant Cafeteria Employees Union, Local 302, is a voluntary unincorporated association of more than seven members, and the defendant William Mesevich is its President.

77 SECOND: That the plaintiffs are partners and owners of the cafeteria known as The World Cafeteria, located at 838 East 180th Street, Borough of Bronx, City of New York.

THIRD: That the partnership formed by the plaintiffs is a valid partnership.

FOURTH: That individuals under the control of the defendants have been picketing said plaintiffs' cafeteria, bearing false and misleading signs that tend to create the impression that the plaintiffs are unfair to organized labor, and also tend to create the impression in the eyes of the public
78 that these pickets were previously employed by the plaintiffs. Said picketing began on or about April 14, 1939.

FIFTH: That those signs carried by the pickets are untrue and known to the defendants to be untrue, because there are no employees at the place of business of the plaintiffs and the plaintiffs are not unfair to organized labor.

SIXTH: That there is no "labor dispute" between the plaintiffs and any employees, or between

the plaintiffs and the defendants, within the purview of Section 876-a of the Civil Practice Act, and no employee of the plaintiffs has ceased working because of any dispute as to the rate of wages or any other acts of the plaintiffs. 79

SEVENTH: That the plaintiffs are the sole owners of The World Cafeteria and do all the work in connection with said cafeteria without any outside assistance.

EIGHTH: That no strike has ever been called at the plaintiffs' place of business. 80

NINTH: That the plaintiffs, as a result of the unlawful practices of the defendants, and the individuals under their control, have suffered damage, and unless the defendants are restrained from continuing their unlawful practices, the plaintiffs would suffer irreparable damage and may find their business ruined without any adequate remedy at law.

TENTH: That the pickets in front of plaintiffs' place of business approached prospective customers of the plaintiffs and told them that the plaintiffs' restaurant was giving bad food and that by patronizing said plaintiffs' restaurant they were aiding the cause of Fascism. 81

ELEVENTH: That the said pickets directed customers about to enter the plaintiffs' place of business to a cafeteria across the street, a competitor of the plaintiffs.

TWELFTH: That the partnership herein was formed on or about April 22, 1939, and all the plaintiffs signed the partnership agreement.

THIRTEENTH: That a certificate doing business as The World Cafeteria was duly filed by the plaintiffs in the office of the County Clerk of the County of Bronx.

FOURTEENTH: That the Cafeteria Employees Union, Local 302, is a voluntary unincorporated association, consisting of a labor union and is affiliated with the American Federation of Labor, and the defendant William Mesevich is the president thereof.

83 FIFTEENTH: That the Cafeteria Employees Union, Local 302, is composed of and has jurisdiction over men and women employed in the cafeteria industry in the City of New York.

SIXTEENTH: That on or about the 15th day of April, 1939, a picket line was established by the Cafeteria Employees Union, Local 302, in front of the World Cafeteria; and that said picket line consisted of a member of the union, walking to and fro in front of said cafeteria, bearing a sign upon which it was stated that The World Cafeteria was unfair to union labor, in that it refused to employ members of the Cafeteria Employees Union, Local 302.

84 SEVENTEENTH: That at no time did more than one person picket in front of The World Cafeteria at any time.

SEVENTEENTH A—That none of the fire insurance policies covering the premises known as The World Cafeteria are in the names of any of the plaintiffs herein with the exception of the plaintiff Demosthenes Loizides.

EIGHTEENTH: That the picketing of The World Cafeteria was at all times orderly and peaceful.

NINETEENTH: That no acts of violence have been threatened or committed by the defendant union.

TWENTIETH: That the plaintiffs herein carry no workmen's compensation insurance.

TWENTY-FIRST: That the plaintiffs herein pay no social security taxes.

TWENTY-SECOND: That the plaintiffs herein pay no unemployment insurance taxes.

TWENTY-THIRD: That the picket on the picket line in front of The World Cafeteria requested the public not to patronize said cafeteria since it was unfair to union labor, and made no other statements or representations.

CONCLUSIONS OF LAW.

1. That the plaintiffs are entitled to a permanent injunction, restraining and enjoining the defendants and their agents, servants and employees and those acting under their direction or control, from stationing any pickets at or near the plaintiffs' place of business at 838 East 180th Street, Borough of the Bronx, City of New York, and from interfering with the plaintiffs' customers who may seek to enter their place of business, or to prevent by coercion or otherwise any customers of the plaintiffs seeking to enter plaintiffs' place

88 *Decision.*

of business, and from interfering in any other wise with the plaintiffs' business.

2. Let a judgment be entered accordingly.

Dated, New York, July 19, 1939.

T. A. L.,
Justice of the Supreme Court,
State of New York.

89 **Judgment Appealed From.**

At a Special Term, Part I of the Supreme Court of the State of New York, County of the Bronx, at the Bronx County Building, 161st Street and Grand Concourse, in the Borough of the Bronx, City of New York, on the 19 day of June, 1939.

Present: Hon. Timothy A. Leary, *Justice.*

[Same Title.]

90 The above entitled action having been brought by the plantiffs for a permanent injunction against the defendants and the individuals under their control, restraining and enjoining them from stationing pickets at or near the plaintiffs' place of business at 838 East 180th Street, Borough of the Bronx, City of New York, and from interfering with the plaintiffs' customers who may seek to enter their place of business, or to prevent by coercion or otherwise any customers of the plain-

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tiffs seeking to enter plaintiffs' place of business, and from interfering in any other wise with the plaintiffs' business, and issues of law and fact having been tried before me on the 14th day of June, 1939, and evidence having been adduced by both parties,

Now, on application of David L. Dehman, attorney for the plaintiffs, it is

ORDERED, ADJUDGED AND DECREED, that the plaintiffs have judgment against the defendants for a permanent injunction restraining them, and the defendants hereby are restrained and enjoined from stationing pickets at or near the plaintiffs' place of business at 838 East 180th Street, Borough of the Bronx, City of New York, and from interfering with the plaintiffs' customers who may seek to enter their place of business, or to prevent by coercion or otherwise any customers of the plaintiffs seeking to enter plaintiffs' place of business, and from interfering in any other wise with the plaintiffs' business.

92

Enter,

T. A. L.,
J. S. C.

MICHAEL McHUGH,
Clerk.

93

September 20, 1939.

94

Case and Exceptions.

SUPREME COURT,

BRONX COUNTY.

SPECIAL TERM, PART I.

[SAME TITLE.]

June 14, 1939.

Before: HON. TIMOTHY A. LEARY, *Justice.*

95

APPEARANCES:

DAVID L. DELMAN, Esq., for the plaintiffs.

BOUDIN, COHN & GLICKSTEIN, Esqs., for the defendant (by IRVING R. FEINBERG, Esq., of counsel), 20 West 43rd Street, New York City.

Mr. Delman: There are two cases here, but they are identical. The complaints are the same except for the title. I ask my adversary to stipulate the decision in one shall be the decision in the other, and that should go even on appeal, the one should
96 be the same as the other, because whoever loses one must lose the other. The facts are the same, the law is the same. I do not see why this Court should try two cases when the decision in one must, perforce, be the same as the other.

Mr. Feinberg: I cannot consent to any such stipulation for the following reasons: We have two individual sets of plaintiffs. The names are different. In one case there are seven plaintiffs, in the other there are nine. There are two separate

cafeterias, one under the name of Corno Cafeteria, and another under the name of the World Cafeteria. They are owned and operated by two brothers. The facts as to one are absolutely different, or have to be different, from the facts in the other. In order to establish their case the plaintiff must call the plaintiffs in each case to the stand.

The Court: I cannot make you do that, but if it is substantially the same kind of case, I cannot understand why you are going to go through the whole thing twice.

Mr. Delman: I am willing to stand or fall and have the decision in one the decision in the second without any testimony.

Mr. Feinberg: I will stipulate that the questions of law involved in both cases are the same. Our dissent is that the partnerships are not bona fide partnerships, but were devised after the establishment of the picket line solely for the purpose of this litigation. On cross-examination we intend to go into the question of the bona fides of these partnerships. One witness is going to testify as to one partnership and another witness is going to testify as to the other partnership. How can the testimony of one witness be binding in the other case, with the witnesses entirely different, and a different set of employees? I do not see how it is possible.

The Court: It is possible for this reason: if it was done for a purpose in one case, it was done for the same purpose in the other.

Mr. Delman: There is no question about it. In the Thompson case the Court of Appeals has said we have the right to avoid a labor dispute by doing just this.

Mr. Feinberg: I will stipulate the questions of law involved in both cases are the same, but it does

not follow, if he establishes a certain kind of arrangement in the first case, he is going to establish the same arrangement in the second case. I suggest we go ahead and try the first case. After all, one of the witnesses is to be put on in that case, and then towards the conclusion of the plaintiffs' case we can proceed——

The Court: Oh, yes, you cannot get any stipulation at the start. They have to have their day in court. I really think you will stipulate before it is over.

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DEMOSTHENES LOIZIDES, of 2104 Crotona Parkway, Bronx, New York City, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Mr. Feinberg: May I request all plaintiffs and witnesses be excluded from the court room during the examination of each witness?

The Court: We cannot exclude parties, whether right or wrong.

Mr. Feinberg: I take an exception to your Honor's ruling.

102 The Court: We will exclude witnesses, but we are not going to exclude parties.

Mr. Feinberg: A party becomes a witness when he takes the stand.

The Court: I cannot exclude a party; he is entitled to know what is going on. We will exclude the witnesses but not the parties.

Mr. Feinberg: May I request all persons who Mr. Delman intends to have take the witness stand, whether parties or witnesses, be excluded from the court room?

The Court: We will exclude the witnesses but not the parties.

Mr. Delman: I take it that goes for the defendant's witnesses also.

The Court: For the defendant's witnesses, too.

Mr. Feinberg: I will exclude them—do you make that request?

Mr. Delman: Certainly. 104

Direct examination by Mr. Delman.

Q. You are known familiarly as Demos, your first name abbreviated? A. Yes. It is hard for American people to pronounce it. They call me Demos for short.

Q. Prior to April 22, 1939, were you the owner of the World Cafeteria? A. Yes.

Q. At 838 East 180th Street? A. That is right.

Q. You had that place reconstructed, did you? A. Yes.

Q. When did you open up for business? A. The 15th day of April, 1939.

Q. When you opened for business, or shortly before, was anybody from the defendant union around to see you? A. Yes. A day or two before we opened up there was a representative of the union who gave me his card, named Fred Taylor. 105

Q. And you had a conversation with him? A. Yes; he asked me to sign with the union. I said, "I have nothing to sign. Ask the men who are going to work here if they are willing to sign. I

106 *D. Loizides—For Plaintiffs—Direct.*

cannot stop them. If they want to, they are free to do it."

Q. Did he go over to the men who had been employed? A. Yes, several men; for instance, John Harris.

Q. Did he speak to those men in your presence? A. Yes; I asked him if he wants to speak to them in my presence, or not. He took them outside on the sidewalk. He was talking to them. I don't know what he said.

Q. You don't know what he said? A. No, I don't.

107 Q. After that conversation, and between that date, April 22nd, did all the employees and you meet—did you have a meeting? A. Yes, sir.

Q. And after that meeting— A. We had a meeting, I asked them if they wanted to join the union, it is up to them, they are free to do it, I cannot stop them from doing it. They said no. I said, "Since you don't want it, I don't want it either," and I suggested a partnership, because I got an idea.

Q. Never mind because. Subsequently did you and all your employees sign a certificate of doing business under the name of the World Cafeteria? A. Yes.

108 Mr. Delman: I offer in evidence certified copy of the certificate on file with the County Clerk's office.

Mr. Feinberg: If your Honor please, I object strenuously to the admission of this document. If there ever was a self-serving document, a document which is not binding on the defendant, this is one.

The Court: Objection overruled.

Mr. Feinberg: May I object also on the ground it is incompetent, irrelevant and immaterial?

(The paper was received in evidence and marked Plaintiffs' Exhibit No. 1.)

Q. I show you a document and ask you whether these are the signatures of all the people that had been working before this document was drawn—did you see them all sign that? A. Yes; they all signed in my presence. I signed, too.

Mr. Delman: I offer in evidence agree- 110
ment of partnership between those individuals whose names appear in Plaintiffs' Exhibit No. 1 in evidence.

Mr. Feinberg: If your Honor please, I again object to the admission of this particular document on the ground it is a self-serving declaration, wholly incompetent, not binding on the defendant, and in no way material or relevant to the issues here.

The Court: Objection overruled.

(The paper was received in evidence and marked Plaintiffs' Exhibit No. 2.)

Q. When did the picketing start? A. The picket- 111
ing started the day before we opened up the place of business.

Q. In other words, on the 14th of April? A. The 14th of April, that is right.

Q. Did you see the activities of the pickets? A. Yes, they walked up and down the street right near the door, and they were approaching customers not to go into the store.

112 *D. Loizides—For Plaintiffs—Direct.*

Q. Did you hear what the pickets said to customers? A. Yes.

Q. Please tell his Honor what you yourself heard, not what someone else told you?

Mr. Feinberg: I object to that line of examination and ask that the pickets be identified, inasmuch as under Section 876-A subdivision 6 thereof, it is specifically stated that no officer or member of any association, organization or of a labor union is bound by any of the acts of the individual members thereof, or by any other persons, unless it is specifically proven without the aid of any presumptions of law or fact that the doing of these acts by the persons or the actual participation in these acts were ratified by the officers of the union and the members of the union. This witness has been asked a particular question——

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The Court: We are not going to have any arguments. I can see there is danger of this being an argumentative case, and we might as well eliminate arguments at the beginning. Overruled.

Mr. Feinberg: Exception.

114 Q. What did you hear the pickets tell any people who wanted to enter your place of business? A. One of the things they said, he was talking to one of my customers who is in business at 180th Street. He said, "Don't go in here, because by patronizing this place you help Fascism," and another thing they said, they send customers across the street. They told them that the food in our store is no good, go across the street.

115

Q. That place across the street, do you know of your own knowledge whether that is a union or non-union place? A. Well, to my knowledge——

Mr. Feinberg: I object to the question.
Objection sustained.
Plaintiffs except.

Q. After that did you have your various policies of insurance, fire and so on, changed to the new owners as appears by Plaintiffs' Exhibits 1 and 2 in evidence? A. Yes; I gave them to my agent.

Q. And they have been changed? A. Yes; he put an endorsement on them.

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Q. Did you also have your bank account changed so that others may sign checks? A. Yes, sir.

Q. Instead of you alone? A. All the partners authorized me and Lucas Harris as one of the partners to sign checks.

Q. Of these seven or eight plaintiffs here, owners of this World Cafeteria——

Mr. Feinberg: I object to that characterization and ask that it be stricken.
The Court: Objection sustained.

Q. Of those names mentioned in the complaint, how many of those were partners of yours before? A. One of them was a partner with me before.

117

Q. Who? A. John Harris.

Q. He was a partner in the same World Cafeteria? A. Yes; he was a partner from January 30, 1938, until October 1, 1938.

Q. Are any of those people related to you? A. Yes, sir; two of them.

Q. Who are they? A. John Harris and his brother, Lucas Harris.

Q. And he is also one of the men named in this complaint? A. Yes.

Cross-examination by Mr. Feinberg.

Q. Mr. Loizides, you are a member of the Greek race; is that right? A. That is right.

Q. All of the other people named in this complaint as plaintiffs are also members of the Greek race? A. Not all of them.

Q. Who are members of the Greek race, at least?

119 Mr. Delman: I object to that as immaterial.

The Court: Objection sustained.

Q. Mr. Loizides, before you opened the cafeteria on April 15, 1939, that is, the World Cafeteria, were you engaged in any other business? A. No, sir.

Q. What were you doing at that time? What was your employment just prior to the opening? A. Just I opened to the location of the World Cafeteria.

Q. Before you anticipated opening the World Cafeteria and devoting your activities to that, what were you doing? A. You mean during the
120 time—during the period the store was closed?

Q. During 1938. A. I was working in the World Cafeteria; I was proprietor of it.

Q. So that the World Cafeteria did not open on April 15, 1939? A. The World Cafeteria is in existence since November, 1932.

Q. What did you mean when you said the World Cafeteria was opened on April 15th— A. We bought the World Cafeteria, me and my two brothers, on April 3, 1933.

Q. Yes, and what did you mean when you said the cafeteria opened on April 15, 1939? A. We closed it—I closed the place on February 11, 1939, for renovation..

Q. It was reopened on April 15, 1939; is that right? A. That is right.

Q. But that was a continuation of the old cafeteria which was open from 1933 to February 11th? A. The same place.

Q. And when you opened the cafeteria on April 15, 1939, did you have the same employees that you had in the old cafeteria? A. Yes, with the addition of two more—rather, three more. 122

Q. Can you tell me just what Mr. Angelos does in that cafeteria? A. Mr. Angelos is chef, he does all the cooking.

Q. Can you tell me what John Harris does in that cafeteria? A. He is the night manager and counterman, and he even washes dishes sometimes when he is busy.

Q. Can you tell me what Lucas Harris does in the cafeteria? A. Lucas Harris is a counterman.

Q. Can you tell me what Nick Fellongis does in the cafeteria? A. He is night kitchen man, helper, or counterman, and dishwasher, of course.

Q. Can you tell me what Harry Galotos does? A. He is day dishwasher, helper and chef, and behind the counter, too, if we are busy. 123

Q. Can you tell me what Mary Wald does in that cafeteria? A. She is a waitress and counter girl.

Q. Can you tell me what you yourself do in the cafeteria? A. I work as a counterman, I do all the buying, and I make up the prices. I mean, for instance, something, the butcher raises prices on, we have to raise prices. Of course, I know more about it.

Q. Who acts as manager of that cafeteria? A. I do.

Q. Were you manager before April 22, 1939? A. Before I was the sole owner and manager.

Q. This agreement, Plaintiffs' Exhibit No. 2, runs for a period of only one year, isn't that right? A. That is——

Mr. Delman: I object to that; it speaks for itself.

The Court: Objection sustained.

Q. When you entered into this agreement for one year, you did not expect to close the cafeteria up on April 30, 1940, did you? A. No, of course not.

Q. Under this arrangement you are to receive 39 per cent. of the profits, isn't that right? A. That is right, sir.

Q. Even though there were seven people? A. Yes, sir.

Q. Engaged in that enterprise? A. Because I have to——

Q. That is all——

Mr. Delman: I object to stopping the witness, if your Honor please.

Mr. Feinberg: I respectfully submit if Mr. Delman wishes to bring out any other facts, he can do so on redirect examination.

Q. When you formed this partnership arrangement you did not take any other new people into the partnership other than those who were already working in the cafeteria; is that right? A. No, sir.

Q. In other words, all the people who are now called partners by you were actually working in the

cafeteria up to the time they signed the contract? A. That is right.

Mr. Delman: I object to the form of the question, "called partners by you"—I object to that part of it.

The Court: Objection overruled.

Q. Where does the World Cafeteria keep its bank account? A. At the Public National Bank, 180th Street branch.

Q. When was that bank account opened? A. The bank account was opened before—you mean the World Cafeteria account? 128

Q. Yes. A. Or the account in my name?

Q. The World Cafeteria account. A. The World Cafeteria account was changed on May 16th.

Q. May 16th of this year? A. Yes.

Q. You were served with a subpoena in this case on or about May 12, 1939, were you not? A. Yes.

Q. And that subpoena asked you to come into court and bring with you all your books and records, including the payroll records, including your liability, accident, fire and compensation insurance policies, including permits, and including bank statements and records from October, 1938, to date. It was after you received that subpoena that you opened the bank account in the name of 129 the World Cafeteria, isn't that right? A. Well, I opened it May 16th.

Q. Have you in court with you all of the insurance policies of the World Cafeteria? A. Yes.

Mr. Feinberg: May I see those insurance policies?

(Papers produced by counsel for plaintiffs.)

130 *D. Loizides—For Plaintiffs—Cross.*

Q. I show you this insurance policy from the Hartford Fire Insurance Company which expires on March 10, 1940, covers premises 838 East 180th Street, and ask you in whose name that policy was taken out and in whose name it now exists?

Mr. Delman: That is objected to; it speaks for itself.

The Court: Objection sustained.

Mr. Feinberg: Is there any objection to me submitting this policy in evidence?

Mr. Delman: No.

131 Mr. Feinberg: I submit that policy in evidence.

Mr. Delman: Give the name so the record will show what it is.

Mr. Feinberg: Policy of the Hartford Fire Insurance Company, 478,793, expiring March 10, 1940.

(The policy was received in evidence and marked Defendant's Exhibit A.)

Q. This policy was originally in your name; is that right? A. Yes, sir.

Q. And it was endorsed over to World Cafeteria on May 24, 1939; is that right? A. That is right.

132 Q. That was after this action had been commenced; is that right? A. That is right.

Q. And after you had been served with a subpoena telling you to appear in court with this policy?

Mr. Delman: Objected to as immaterial.

The Court: Objection sustained.

Mr. Feinberg: Exception.

Q. As a matter of fact, you endorsed over all of your insurance policies after the commencement of this action, isn't that right? A. That is right.

Q. And after you had been served with a subpoena directing you to produce those policies in court, is that right?.

Mr. Delman: Objected to. The Court has already sustained an objection to a similar question.

The Court: Objection sustained.

Q. Who signs checks for the World Cafeteria? A. I do, and Lucas Harris.

Q. Lucas Harris is a relative of yours, is that right? A. Yes.

Q. He was with you in the old World Cafeteria before the new one opened up? A. Yes, sir. He is with me since February of 1938.

Q. Before you signed this agreement, Plaintiff's Exhibit No. 2, which you call a partnership agreement——

Mr. Delman: I object to that characterization, if the Court please.

The Court: Objection sustained.

Mr. Delman: I move to strike it out.

Q. Before you signed this agreement dated April 22, 1939, Plaintiffs' Exhibit No. 2, did any of the employees who signed that agreement invest any money in the business? A. No, but they signed notes.

Q. They did not give you any money; is that right? A. No; they did not give me any money. They signed notes.

136 *D. Loizides—For Plaintiffs—Cross.*

Mr. Feinberg: I did not ask whether they signed notes; I move to strike out the latter part of the answer.

The Court: Motion granted.

Q. The picket line was established by the defendant union in front of the World Cafeteria about the day it opened, on April 15, 1939? A. No, the day before.

Q. Then you went to see your lawyer to find out what you could do about getting the picket line removed? A. No, I did not go to my lawyer. I
137 talked to people in the store first and they did not want to join the union.

Q. Then you went to see a lawyer to find out what you could do about getting the picket line removed, is that right? A. I had an idea by making a partnership it may remove it.

Q. Where did you get that idea from? A. My milkman gave it to me.

Q. Is your milkman a lawyer? A. No, he is not.

Q. Are you a lawyer? A. No.

Q. But you just knew out of a clear sky that if you formed a partnership agreement you might be able to get the picket line removed? A. After I got the idea and discussed it among the workers that used to work there—there then, because they
138 are partners now—then they all agreed to the idea, then——

Q. Just a minute. A. We saw our lawyer.

Q. Do you remember speaking to Mr. Chris Panos, an official of the union, on the phone on May 9, 1939? A. I remember speaking to him on the phone; I don't remember exactly what day it was.

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Q. That was after the motion papers for temporary injunction had been served in this case, isn't that right? A. I think so.

Q. You told Mr. Panos that your lawyer had advised you to form a partnership; therefore, you did not have to take a union any more; is that right? A. No, I did not tell him that, but——

Q. That is all; in whose name is the lease covering this store? A. The lease is in my name.

Q. Do you have that lease with you? A. No; the lease is mortgaged.

Q. Pardon me? A. It is mortgaged.

Q. Do you have the lease? A. I haven't got it; 140
the mortgagee has it.

Q. You mean you have assigned the lease to the mortgagee? A. I signed a mortgage on the lease, what that means by law.

Mr. Delman: The mortgagee has possession of it now.

Q. Did you carry workmen's compensation insurance for your employees before April 22, 1939? A. I applied for it, and I dropped it; I just got a binder for several days.

Q. You stated the cafeteria was opened from 1933 until February— A. Well, during that time, yes—I mean after the renovation, because it was 141
stopped February 12th.

Q. That is from February 12th to April 22nd did you carry workmen's compensation insurance? A. No, sir, because I did not have any employees in the store; the store was closed; just the carpenters and contractor. He was supposed to furnish all the insurance policies.

142 *D. Loizides—For Plaintiffs—Cross.*

Q. From April 15th, the day the store was opened, until April 22nd, did you carry any workmen's insurance? A. I applied for it. They don't give you the policy right away; they give you a binder, until they find out how much wages you pay, and base it on that.

Q. Did you have a binder during that period? A. Yes, I had.

Q. For how long did the binder cover your employees? A. The binder was for seven days, and they extended it for seven more, but I dropped it in the meantime.

143 Q. So that now you carry no workmen's compensation at all? A. No; everyone has an accident insurance policy.

Q. From April 15th to April 22nd did you pay social security taxes to the Federal Government for your employees? A. No; we pay at the end of every three months. That means at the end of June, then we fill out the application; we have until the end of July to pay it.

Q. Did you pay social security taxes for your employees prior to February 22, 1939? A. Yes, I did.

Q. But you were not going to pay any social security taxes for your employees— A. I have no employees now.

144 Q. —after April 22nd? A. I have no employees now.

Q. You keep repeating that phrase, you have no employees; is that right? A. Of course I have no employees.

Mr. Delman: That is a direct answer to his question—well, there is no jury here; never mind.

Q. The picket line was put on in front of your place of business on April 15th? A. The 14th. 145

Q. April 14th, is that right? A. That is right.

Q. The picket line has been there continuously up until the present time? A. That is right.

Q. There has been a man walking up and down with a sign saying, "This place is unfair to labor and refuses to employ members of Cafeteria Employees Union, Local 302"? A. Sometimes they approach customers——

Q. I did not ask you that; I asked you what the sign says. A. The sign said, "This place is unfair to labor, please help us," and on the other sign they say, "Please patronize places that display this sign." They have a card on that sign. 146

Q. Please patronize places that display the union sign? A. The union card. They have a particular sign printed, but the people carrying the sign, they send them into places where there is no sign.

Mr. Feinberg: I move to strike that as not responsive.

The Court: Motion granted.

Q. The reason why you formed this partnership was in order to avoid the unionization of your place of business, isn't that right? A. The reason I formed that partnership is because the people that work for me did not want it. They did not feel like paying dues to anybody for making a living, and I did not want it, either. 147

Q. In other words, the reason you formed the partnership was to avoid a picket line walking up and down in front of your place? A. That is right, because it hurts my business.

Q. It hurts your business? A. Of course.

148 *D. Loizides—For Plaintiffs—Cross.*

Q. The old cafeteria that was open until February 22nd was also known as the World Cafeteria; is that right? A. Yes, it was.

Q. And you did business all the time under the name World Cafeteria? A. Yes, I did.

Q. When you assigned that policy, the fire insurance policy, Defendant's Exhibit A, you assigned it to the World Cafeteria; is that right? A. I assigned it; I don't know what my agent put there; I don't know exactly if he made the policy to my name or to the World Cafeteria.

149 The Court: You don't have to answer that, anyway. If there is an assignment, that indicates what it is. There is no use of your explaining it.

Q. Do you have the books and records of the World Cafeteria here pursuant to the subpoena that was served on you?

The Court: What more do you want? This man said he formed the partnership to avoid paying union dues. What was the answer to that question?

(The following part of the record was
150 read:

"Q. The reason why you formed this partnership was in order to avoid the unionization of your place of business; isn't that right? A. The reason I formed that partnership is because the people that work for me did not want it. They did not feel like paying dues to anybody for making a living, and I did not want it, either.

"Q. In other words, the reason you formed the partnership was to avoid a picket line walking up and down in front of your place? A. That is right, because it hurts my business.")

The Court: There is your case, right there.

Mr. Feinberg: We claim it is not a bona fide partnership.

Mr. Delman: I will state to the Court frankly that plaintiffs' case stands or falls—your Honor got the proposition very neatly and quickly—we claim that is exactly what we did, and we have a perfect right to do so under the Court of Appeals decision, as pointed out in my memorandum of law. 152

Mr. Feinberg: I don't want to argue.

The Court: No, but there is the case, and you have got it where it cannot be controverted; you have got it from the plaintiff, where there is no controversy, and you are going to succeed or fail right there. We are not going into the question of purpose any further.

Mr. Feinberg: I am not going into the question of the purpose any further, but there are facts that were brought out. 153

Q. Do you have the books and records of the World Cafeteria pursuant to the subpoena served on you? A. Yes, I have the books that cover the World Cafeteria since December, 1938. The other books are lost.

Mr. Feinberg: May I have those books? (Books produced.)

The Witness: That big book is for the old World Cafeteria.

The Court: He formed a partnership and formed it for a particular purpose.

Q. How much did Mr. Angelos receive as salary as a chef when the cafeteria opened on April 15th? A. He received $28.

Q. $28 a week? A. A week.

Q. How much did John Harris receive for salary as a counterman and dishwasher and night manager? A. $26.

155 Q. How much did Lucas Harris receive for his salary? A. $26.

Q. How much did Fellongis receive for his job as night watchman, dishwasher and counterman? A. $18.

Q. How much did Galotos receive for his salary as day dishwasher and counterman? A. $18.

Q. How much did Mary Wald receive for her job as waitress? A. $10.

Q. How much did you receive for your job as manager—never mind that; I withdraw that question. After this alleged partnership was formed on April 22nd, on May 21st Nick Fellongis was getting $18, isn't that right? A. That is right.

Q. That is the same amount as his salary was
156 before? A. These people worked——

Q. Is that the same amount— A. Yes, it is the same amount.

Q. And on May 21, 1939, Lucas Harris received the sum of $26, isn't that right? A. Yes.

Q. And that is the same amount as his salary was? A. Yes.

Q. And on the same day Gus Angelos received the sum of $28?

The Court: Well, he says they received the same salary as before.

A. I will give you the same answer for all.

Q. So all the plaintiffs receive the same amount each week that they formerly did? A. They do, mostly do the same; sometimes they don't, because the books are open, the books are not closed until the end of three months; every three months when we close the books—we don't know how much profit, how much loss we have.

Q. They receive now the same amount they formerly received? A. Yes, they do, now. 158

Q. Who keeps that little diary book here, the National Diary? A. I do.

Q. Is all of it in your handwriting? A. Most of it, I think.

Q. Under the terms of this agreement Nick Fellongis was supposed to receive 9 per cent. of the income, and Harry Galotos was supposed to receive 8 per cent. of the income, isn't that right? A. That is right.

Q. And they are both receiving $18 per week, isn't that right? A. Because they were receiving the same amount before.

Q. They are still receiving $18 per week now? A. Yes; the books are not closed——

Q. That is all; don't volunteer. 159

The Court: Now you have got all you want.

Mr. Delman: I would have conceded that whole testimony. I will concede further—

Q. Were there any other persons employed in this cafeteria at any time at all from April 14,

1939, to the present date; aside from the persons mentioned in the complaint, did you take on any people at all, either as extras, additional—any people? A. Yes, we take on extra when you subpoena us to court; we cannot close the business.

Q. In other words, you have additional employees aside from the plaintiffs mentioned in the complaint? A. We put the employees there when you subpoenaed us to come to court. We cannot close the business.

Q. You have certain employees who are hired during emergencies, isn't that right? A. Why, during emergencies, of course. We cannot close
161 the place of business; we cannot take partners away for a day——

The Court: Don't volunteer; answer just yes or no.

Redirect examination by Mr. Delman.

Q. Did you ever have any non-union employees there? A. No, sir.

Q. Did you ever have a strike in your place of business? A. No, sir.

Mr. Feinberg: Your Honor, I object to
162 that; it is immaterial and irrelevant.

The Court: Objection overruled.

Q. Each one of these men, the plaintiffs here, has executed a note for his share of the assets? A. Yes.

Q. And who has these notes? A. I think they are in your possession.

Q. In my possession, are they? I will look in my file. When are adjustments to be made as to profits and losses? A. Every three months.

Mr. Feinberg: Your Honor, I object to the question.

The Court: Objection sustained.

Q. Will you tell his Honor the reason for the same drawings at the present time

Mr. Feinberg: Objected to, if your Honor please.

The Court: Objection sustained. 164

Mr. Delman: May I finish my question?

The Court: Was there an agreement, a partnership agreement?

Mr. Delman: Yes.

Mr. Feinberg: It is in evidence already.

The Court: Yes, that is what I thought. I have not read it. I am not going to let him interpret it for me.

Mr. Delman: Your Honor is quite right.

(Recess until 2.15 o'clock.)

AFTERNOON SESSION. 165

Mr. Feinberg: I would like to have the prior witness recalled for a few extra questions.

Mr. Delman: All right.

166 *D. Loizides—For Plaintiffs—Recross.*

DEMOSTHENES LOIZIDES recalled.

Recross-examination by Mr. Feinberg.

Q. Mr. Loizides, you said the lease for the World Cafeteria was in your name; is that right? A. Yes.

Q. You did not assign that lease to anybody else after the agreement was signed? A. No, I did not.

Q. In other words, the lease is still in your name; is that right? A. Yes.

Q. You are also the owner of all the fixtures in
167 that cafeteria; is that right? A. No, I am the owner until they are paid up.

Q. What? A. I am not the owner of them unless they are paid up. There is a mortgage on the fixtures.

Q. But they are in your name as the owner of the equity; is that right? A. Yes.

Q. And you did not assign them to anybody else after this agreement was signed? A. No; when they pay their notes, then they own——

Mr. Feinberg: I ask that the latter portion be stricken.

The Court: Motion granted.

168 Q. Did you read this agreement, Plaintiffs' Exhibit No. 2, before you signed it? A. Yes, sir.

Q. Do you know that under the terms of that agreement there is to be no accounting until the end of the partnership next year? A. No accounting?

Q. No accounting is to be given to any of the members until the end of the partnership, isn't that right? A. No; an accounting is supposed to be made every three months.

Q. Can you show me in this agreement where it says there is to be an accounting every three months——

The Court: No.

Mr. Delman: I will show it to you.

Q. What is the income from the cafeteria?

Mr. Delman: I object to that.

The Court: Objection sustained.

Mr. Feinberg: If your Honor please, the agreement reads these employees are to be paid as a drawing account a certain per- 170
centage each week of net income. Certain employees, Mr. Angelos is to receive $28 per week, Mr. Galotos $18, and the waitress, Mary Wald, $10 a week.

The Court: Well, now, that is on the record.

Mr. Feinberg: If you take the amounts here and compare it with the percentages they are to receive in each particular case, the income is different. I understand objection to my question as to the income of this source has been sustained.

The Court: Yes.

Mr. Feinberg: Exception. 171

Q. Did you receive a Board of Health permit when you opened the cafe'teria? A. I have the old permit. I am going to renew it at the end of this month; that is when it expires.

Q. When was the permit obtained by you? A. The permit was last year; I have the permit here.

Q. May I see the permit? A. Yes, sir; it is among the insurance papers there (permit pro-

172 *D. Loizides—For Plaintiffs—Recross.*

duced). That permit was issued when I and Harris were partners, and I go down as a partnership, they did not want to put it on the permit: I don't know why they did not want to.

Q. This permit permits you, Demosthenes Loizides, to maintain a restaurant at 838 East 180th Street: is that right?

The Court: That is not in evidence, is it, and you are reading it?

Mr. Feinberg: I offer this permit in evidence.

173 Mr. Delman: There is no objection.

(The permit was received in evidence and marked Defendant's Exhibit B.)

Q. Is that the only permit that was issued to the cafeteria? A. Yes, June, 1938.

Q. This permit expires on June 30, 1939? A. That is right.

Q. Has any permit been issued to any of these plaintiffs in this case to conduct a cafeteria or restaurant? A. No other plaintiffs.

Q. You did not attempt to assign this permit to any of the other plaintiffs in this case, did you? A. What do you mean by assign?

174 Q. Transfer it. A. It is going to the whole partnership.

Mr. Delman: Objected to.

The Court: Objection sustained.

Q. Did you apply to the State Mediation Board to settle a controversy that you had with the union which started on April 15, 1939?

Mr. Delman: Objected to.

The Court: Objection sustained.

Mr. Feinberg: Exception.

Q. You had your lawyer file a certificate of doing business which was introduced as Plaintiffs' Exhibit No. 1; is that right? A. That is right.

Q. In 1936 you filed a certificate of doing business yourself as the World Cafeteria, didn't you? A. I myself, or was I and my partner?

The Court: We don't care anything about that; he tells us when he filed this certificate. 176

Q. Do you know there is now on file a certificate of doing business as the World Cafeteria at this very same address, signed by yourself and James Loizides, your brother?

Mr. Delman: That is conceded.

A. Well, of course, I did business under World Cafeteria, me and my brother.

Q. Did you file any certificate of cancellation, cancelling that? A. I did not know I had to file a cancellation.

Q. Did you file a certificate of cancellation? A. No, I didn't not. 177

Redirect examination by Mr. Delman.

Q. As to that lease, who has the lease? A. My lease was mortgaged to the 20th Century Contracting Company.

Q. And the 20th Century Contracting Company has your lease at the present time—the paper, the physical lease? A. Of course they have.

Q. They got that way before this partnership was formed? A. They got the lease when I—when the mortgage was signed; I don't remember the date exactly, but I think it was some time in March.

Recross-examination by Mr. Feinberg.

Q. Did you ask this mortgage company for your lease so that you could assign it to the partners? A. They did not give it to me.

179 Q. Did you ask them for it? A. No; I know I cannot get it, so they did not give it to me.

Q. But you did not ask them for it, did you? A. No.

Mr. Delman: If we could, I will take a concession; we could save so much time and effort on the part of Court and counsel. I have corroborating witnesses, each of these plaintiffs; if you will concede, not the truth, but that they will so testify, I am through with my case.

The Court: I will let you call them in rebuttal, if necessary.

Mr. Delman: All right. I will just take
180. this one and that will be the last one.

JOHN HARRIS, of 2160 Mapes Avenue, Bronx, New York City, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination by Mr. Delman.

Q. Mr. Harris, you are one of the plaintiffs here? A. Yes.

Q. You were once before a partner of Mr. Loizides? A. That is right.

Q. When was that? A. It was about from February 1st, 1938, to November. I don't remember the day that we cancelled——

Q. Do you remember when the picketing was begun at this World Cafeteria? A. That was before we opened up, one or two days.

Q. Before it was opened for business? A. That is right.

Q. Do you recall after that, when the place was opened for business, did you go to a meeting of the employees? A. Yes. 182

Q. And after that meeting—was I present at that meeting? A. Who?

Q. Was I present at that meeting of the employees? A. No.

Q. After that were contracts prepared—I show you Plaintiffs' Exhibit No. 2 in evidence, and was this agreement signed by all of them, and were you present at the time? A. Yes.

Mr. Feinberg: I object; I object to the form of the question.

The Court: Objection overruled.

Q. Did Mr. Demosthenes Loizides, known to you probably as Demos— A. Yes. 183

Q. Before this agreement was signed, did he ask each of you whether you wanted to join the union?

Mr. Feinberg: I object to the form of the question as leading.

The Court: Objection sustained.

Q. You are now one of the owners, are you, of the World Cafeteria?

184 *John Harris—For Plaintiffs—Direct—Cross.*

Mr. Feinberg: I object to the form of the question, which is assuming something not proven, not sustained by the evidence.

The Court: Objection overruled.

A. Yes.

Q. You signed a note, did you? A. Yes.

Q. As your investment? A. Yes.

Q. And each of the others did, to, to your knowledge? A. Yes.

Q. What is the amount of your note?

185 Mr. Feinberg: I object to that. The note itself should be presented to this Court.

The Court: Objection overruled.

A. $1800.

Cross-examination by Mr. Feinberg.

Q. Mr. Harris, you work in the World Cafeteria? A. Yes.

Q. What duties do you do there? A. I am all over; I have no special——

Q. Don't you do something besides being the owner? A. Well, I wait on customers and I clean up the place; I take care of everything; I am

186 the night man.

Q. Were you employed in the World Cafeteria before April 22, 1939? A. I was. 1938.

Q. You have been employed there during the entire year 1938? A. I was the boss ten months in 1938.

Q. When were you laid off? A. I was not laid off.

Q. You were employed there from about February or March, 1938; is that right? A. That is right.

Mr. Delman: He said he was boss there.

The Witness: That is January to the end of 1938, I was employed.

Q. You have been continuously working there until the present time; is that right? A. No; before the place closed I was sick and I went to the hospital.

Q. This meeting that you just mentioned, that was called by Mr. Loizides, wasn't it? A. That was between all of us, the employees.

Q. Who called the meeting? A. Well, I cannot recall exactly.

188

Q. You did not call the meeting, did you? A. Maybe I do it.

Q. Did you speak to any of the other workers in the place and ask them to come to that meeting? A. I don't remember speaking to anyone, but everyone knew what it was all about. I don't know how they——

Q. When did the meeting take place, what time of day? A. Oh, I don't remember the day; I don't remember the time.

Q. Did it take place at night? A. I don't know.

Q. Did it take place in the morning? A. I said I don't know; I don't remember.

Q. You said you were at the meeting? A. I was in the meeting.

189

Q. And you don't know whether the meeting was in the morning or night? A. It was in the cafeteria; I don't know what time it was.

Q. You say you are the night man, and work at night? A. Yes.

Q. What time do you go on duty? A. 7 o'clock.

Q. How long do you work—until what time do you work? A. How long—6 or 7 o'clock.

Q. What is that? A. 6 to 7.

Q. You go on duty at 7 o'clock at night? A. Yes.

Q. And you work until 7 o'clock in the morning? A. Sometimes 7, sometimes earlier, sometimes 6.

Q. Was this meeting held while you were on duty or before you went to work? A. I tell you I don't know; I don't remember.

Q. Who told you to come to the meeting? A. Well, that was a long time. We talked many times. I cannot tell you exactly.

Q. Mr. Loizides asked you to come, didn't he?
191 A. Well, I was there sometimes, I come there for coffee before my hour to start.

Q. Can you read English? A. Yes.

Q. Did you read that agreement before you signed it? A. Yes, I did.

Q. Did not Mr. Loizides read it to everybody out loud? A. Mr. Loizides? Mr. Loizides read his own.

Q. Did you have a copy of that agreement? A. That is all right.

Q. How much did you receive as salary per week during the year 1938? A. 1938 I was a partner.

Q. When did you go back to work for the first time? A. Well, when the place opened up.

192 Q. That was on April 14, 1939; is that right? A. That is right.

Q. How much did you receive per week? A. For the week, I think $22.

Q. $22 per week and how much are you receiving now? A. Now I draw as much as I need.

Q. Don't you get a certain amount each week? A. No.

Q. When did you last receive a salary? A. Yesterday, I think.

Q. How much did you receive? A. Well, $22.

Q. And you received $22 a week before that, too, didn't you? A. That is all right. I drew more than that. You will find more than that.

Q. As a matter of fact, you received $26 per week, didn't you? A. That is right.

Q. You did not get $22? A. I draw $26 sometimes.

Q. And you get $26 every week, don't you? A. No; sometimes I draw $22.

Q. Under the agreement you are supposed to receive a certain amount every week? A. No, I am not supposed to receive a certain amount every week; we have got to have so much percentage. 194

Q. Did you speak to your lawyer before you came to court? A. Did I speak to my lawyer?

Q. Yes. A. No; I spoke to my lawyer.

Q. Did you speak to Mr. Delman before you came in court? A. When?

Q. Before today? A. Yes; I spoke to him many times.

Q. And he told you to say that you are a partner, and keep on saying you are a partner— A. No, he did not tell me to say, but the paper right there says I am a partner.

Q. And that is the only thing you have in your mind, you are a partner, you must keep on repeating it, you are a partner; is that right? A. I am a partner. 195

Q. That is, though you are a partner, you receive a certain stated amount every week; isn't that right? A. That is all right.

Q. Did you invest any money in this business? A. I gave a note, $1,800.

Q. When is the note due? A. After a year.

Q. After the agreement expires? A. That is right.

Q. You don't have to pay anything at all until after the agreement expires? A. No; I want to pay it up.

Q. If you don't want to pay, you don't have to? A. I have to pay at the end of the year.

Q. You don't have to pay if you don't want to at the end of the year? A. I pay according to the percentage.

Q. When this agreement expires at the end of the year you don't have to pay your money unless you want to pay it? A. I want to pay; I have to pay it because I owe——

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Mr. Delman: Just a minute. The Court can take judicial notice the note is an enforceable document.

Mr. Feinberg: We don't have the notes here. We don't know the terms thereof.

Mr. Delman: Just a moment. My client said I have that and I did not—we will show you the notes. I may have given them to the bookkeeper.

Q. Did you read this agreement before you signed it? A. That is right.

Q. Don't you know it says in the agreement you don't have to pay the money at the end of the year

198 unless you want to pay it? A. I want to pay it.

Q. But you don't have to pay it? A. I want to be an owner.

Mr. Delman: The Court has read this agreement. I don't recall any such provision in it.

The Court: Sustained.

Q. So far you have paid absolutely no money to Mr. Loizides, is that right? A. I gave him a note, which is just as good.

Q. The note was given to Mr. Loizides personally, is that right? A. That is all right.

Q. And it is made payable to him personally, is that right? A. That is right.

Q. Do you pay any interest on the note? A. Well, I don't think we pay interest, because we fixed the price to pay in one year. That includes everything in the note. After that, if we don't pay, we make no other agreement; we will have to pay interest and everything.

200

Q. At the end of a year you don't have to pay any interest on that note? A. We have to pay.

Q. Does the note bear interest from the present time until the end of the year? A. It is included in the price of the store.

Q. $1,800, the amount of the note, includes interest; is that right? A. That is right.

Q. Do you know how the sum of $1,800— A. Of course. We agree so much for the place.

Q. Do you know how the amount of $1,800 was arrived at? A. How?

Q. Yes. A. What do you mean by "how"?

Q. How did they decide you owe $1,800? A. Because I have 12 per cent.

201

Q. 12 per cent. of what? A. 12 per cent. of the place.

Q. Right now you are owning 12 per cent. of the place? A. That is right.

Q. But you have not paid in any money at all? A. I will pay in at the end of the year when the note expires.

Q. Don't you think you ought to pay interest?

202 *John Harris—For Plaintiffs—Cross.*

Mr. Delman: I object to the form of the question.

The Court: Objection sustained.

Q. Who hired you on the 15th of April, when the place of business opened? A: Who hired me?

Q. Yes. A. Well, I was an old employee; I went up to work.

Q. Did not you have to speak to somebody before you went to work? A. I did not speak to anybody.

Q. You just went in to work? A. That is right.

203 Q. Did you receive any salary for the first week you worked there before this meeting? A. Yes.

Q. So social security tax was deducted from your salary that you received that week? A. I don't remember that.

Q. Did you speak to Mr. Delman, asking him to start action for you for an injunction against the union? A. What is that?

Q. Did you speak to Mr. Delman and ask him to start action for an injunction against the union? A. We had a meeting, all together, and we decided to have an action.

Q. Was Mr. Delman present at that meeting? A. Mr. Delman?

Q. Yes. A. I don't think so.

204 Q. Did you sign any written statement authorizing Mr. Delman to bring this action for you?—

Mr. Delman: I object to that.

The Court: Objection sustained.

Q. Do you know how much money there is in the bank account of the World Cafeteria at present?

Mr. Delman: Objected to as immaterial.

The Court: Objection sustained.

Q. Do you know what the total income of the World Cafeteria was last week?

Mr. Delman: Objected to.

The Court: Objection sustained.

Q. This meeting you have just referred to, who was present? A. This meeting what?

Q. Who was present at the meeting? A. All of us.

Q. Whom do you mean by "all of us"?

The Court: Don't answer that. 206

Q. Did Mr. Loizides speak to you at that meeting? A. What meeting? A meeting to hire a lawyer?

Q. The meeting that you have testified to when asked by Mr. Delman whether or not you had a meeting. A. Still I don't understand what meeting.

The Court: The meeting to form a partnership.

The Witness: That is all right; everybody was there.

Q. Did Mr. Loizides speak to you at that meeting? A. Well, he told us the price, what percentage each one is going to get. 207

Q. Did he ask you whether you want to belong to the union? A. He did not ask me; someone from the union asked me.

Q. Mr. Loizides never spoke to you about belonging to the union? A. No.

Q. You heard Mr. Loizides testify on the stand that he asked all his employees whether they wanted to belong to the union and you say he was

not telling the truth when he said that? A. He did not ask me; someone else asked me.

Q. But he never spoke to you about belonging to the union? A. No.

Redirect examination by Mr. Delman.

Q. You know, do you not, Mr. Harris, that if there are losses here you have to pay 12 per cent. of the losses? A. Yes.

209 Mr. Feinberg: Objected to, same ground your Honor ruled when asked by me.

The Court: Objection sustained.

Mr. Delman: All right, question withdrawn. That is the case of the plaintiffs, of the World Cafeteria.

PLAINTIFFS REST.

Mr. Feinberg: If your Honor please, at this time I move to dismiss the complaint and ask for judgment in favor of the defendant dismissing the complaint on the following ground: In the first place, this partnership was formed and devised solely for the purpose of this litigation, of obtaining an injunction against the union, and the plaintiffs' manager himself has so testified. It is not a bona fide partnership; it was formed for one year only. All the employees there invested absolutely no money whatsoever, but gave notes. These notes do not became due until after the expiration of the partnership. The lease is still in the name of Mrs Loizides. The bank account is still

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in the name of Mr. Loizides. The permit from the Board of Health is still in his name. In addition, there are numerous other factors indicating the partnership is not a bona fide partnership, but was formed solely for the purpose of perpetrating a fraud upon these unsuspecting employees—and I use the word "unsuspecting" designedly—to deprive them of workmen's compensation, social security and unemployment insurance. Secondly, I point out that this case falls within Section 876-A, for, even assuming the partnership to be valid, which we do not, it arises out of a labor dispute. Section 876-A applies to all actions involving or growing out of labor disputes. This action grew out of a dispute which existed when the place was opened, therefore Section 876-A is applicable; the Court has no jurisdiction to issue any temporary or permanent injunction. The plaintiff has not complied with Section 876-A in any respect whatsoever. The papers do not contain proper allegations. There has been no bill of particulars here under 876-A and I respectfully request that the complaint be dismissed.

Thirdly, I respectfully submit that even were 876-A inapplicable, nevertheless the plaintiff would not be entitled to the relief prayed for. There is no evidence of violence, no evidence of destruction of property, no evidence of disorderly conduct. There is only evidence of peaceful picketing with an appeal to the public not to patron-

ize a non-union place. This place certainly is non-union. The right to picket does not depend upon Section 876-A. It was established long before the existence of 876-A. Judge Brandeis himself has said, even without these anti-labor injunction acts, no court may deprive a person of the right to peacefully picket. The cases cited by the plaintiff rest merely on two cases decided by Judge Cotillo in which we ourselves represented the defendant union. I am
215 not going to discuss them now——

The Court: No, that is enough; I don't want to hear argument. Motion denied.

Mr. Feinberg: Exception. Can I call my witness from outside?

Mr. Delman: You can bring them all in now. How many have you?

Mr. Feinberg: Three.

Mr. Delman: All right, bring them in.

DEFENSE.

RALPH DEL PISO, of 1268 Olmstead Avenue,
216 Bronx, New York City, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Feinberg.

Q. Are you an officer of the Cafeteria Employees Union, Local 302? A. Yes, I am.

Q. What office do you hold? A. Business agent.

Q. As business agent are you in charge of the picket line in front of the World Cafeteria on East 180th Street, Bronx? A. I am.

Q. Was the picket line placed in front of the cafeteria at your request? A. Yes, it was.

Q. And you are familiar with the actual occurrences on that picket line; is that right? A. Yes.

Q. Can you tell us when that picket line was first established? A. The picket line was first established the date the store opened up.

Q. Do you know what day that was? A. I believe it was around April 11th or 12th.

Q. Do you know whether the picket line was 218
established before the store opened up? A. No.

Q. Was the picket line placed there before the store opened? A. The picket line was established the day the store opened up.

Q. Do you know how many pickets have been on that picket line at any time? A. One.

Q. Was there ever at any time more than one picket? A. Not to my knowledge.

Q. On that picket line? A. Not to my knowledge.

The Court: You mean one at a time?

The Witness: One at a time, yes.

Q. Do you know just what activities that picket 219
engaged in? A. Just walked back and forth in front of the store notifying the public the place is unfair to organized labor.

Q. What does it say on the sign? A. "The World Cafeteria is unfair to organized labor; please help us win," and so on.

Q. Do you know whether or not there has been any police intervention on the picket line? A. Not that I know of.

Q. Do you know whether anybody has ever been arrested? A. We have had no arrests.

Mr. Delman: There is no such claim, I concede.

Mr. Feinberg: Is it conceded the picketing was orderly and peaceful at all times?

Mr. Delman: That is not your question at all. I will concede no one has been arrested.

Mr. Feinberg: Will you concede there has never been any disorderly conduct on that picket line?

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Mr. Delman: Disorderly conduct, yes, I will concede that, if you mean by disorderly conduct the way the courts have construed them, yes; not in the dictionary sense.

Q. Do you know whether it has ever been necessary for the police to be called to that place?

Mr. Delman: Objected to.

The Court: Objection sustained.

Q. After the picket line was placed in front of the World Cafeteria did you receive a visit from any one of the plaintiffs in this case? A. I did.

Q. At the union offices? A. I did.

Q. Do you know the name of the person who visited you? A. The person that visited me at that time was introduced to me by Chris Panos and he said his name was Chris—something like Lindbergh, or Limboros, something like that. I know his first name was Chris, Limbos, I am not sure whether you pronounce his name exactly that way.

Q. What did he say to you and what did you say to him? A. He came over——

Mr. Delman: Objected to as not binding on all these plaintiffs.

The Court: Objection overruled.

Q. What did he say to you and what did you say to him? A. He came over to me, he said he was an employee of the cafeteria, and that he had been sent by Louis Loizides, the proprietor, to find out what the union wanted in regard to the store, what the union views were.

Mr. Delman: I object to that on the ground this is not from the plaintiffs. We are trying now the World Cafeteria; Louis Loizides is the Cosmo Cafeteria, the second place. 224

Mr. Feinberg: But this person spoke in behalf of both cafeterias.

Mr. Delman: I object.

The Court: Objection overruled.

Mr. Delman: Exception.

Q. Yes, go ahead. A. He said they wanted to find out in order to make an appointment for the proprietor and the union. I gave him the information he requested and he left my office with the understanding of telephoning me the following day for a definite appointment for a conference 225 with the proprietors of both stores, an appointment which never materialized.

Q. Did he tell you who sent him to the office? A. He told me Louis Loizides sent him.

Mr. Delman: Objected to and I move to strike it out as not binding upon the plaintiffs.

The Court: I will take it.

Q. Before the cafeteria opened up did you speak to anybody about signing up with the union? A. I did, the afternoon before the cafeteria opened up, after several efforts to contact one of the employees I called up Louis Loizides in the other cafeteria. I spoke to him over the telephone, I spoke to him over the wire in regard to the World Cafeteria, and he answered me, he said, "Well, there is nothing I can do, that is my brother's place, you better get in touch with him." My efforts to continue the conversation were interrupted when he hung up.

227 Q. He hung up on you? A. That is right.

Q. He told you the World Cafeteria was his brother's place? A. He said, "That is my brother's place; you better see him."

Q. After the service of the motion papers, and on or about May 9th, did you visit the World Cafeteria? A. I did.

Q. Whom did you speak to there? A. I spoke to Louis Loizides, and one of the men in the place. I know the man that was with him in the store there, his cousin I believe him to be.

Q. What did he say to you? A. He had a conversation that morning with Chris Panos, one of our officers, and he had made an appointment with him, or rather, agreed to meet him in the store——

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Mr. Delman: That is purely hearsay: I object.

The Court: Yes.

Q. Just tell us what Mr. Loizides said to you. A. When I went over I asked him about getting together and settling the matter up. He told me he had called up his attorney, his attorney had for-

bidden him to do any talking, and that he had a very good case in court, and we were naturally asked to leave.

Cross-examination by Mr. Delman.

Q. You say you saw Louis Loizides at the World Cafeteria? A. At the Cosmo Cafeteria.

Q. Didn't you say a minute ago you spoke to Louis Loizides at the World Cafeteria? A. I did not say that.

Q. Who is Louis Loizides, point him out here, please? A. The man sitting behind the old lady with the checkered coat. 230

Q. Is this the man (indicating)? A. Yes.

Q. He told you that he spoke to a lawyer? A. That is what he told me.

Q. And the lawyer forbade him to say anything —right? A. I did not say that. I said he spoke to me, told me his lawyer had advised him not to take any measures, that he had a very good case in court.

Q. Did you ask him who his lawyer was? A. I did not.

Q. You did not ask him who his lawyer was? A. No.

Q. Did you know who the lawyer was? A. I knew the lawyer's name was Mr. Delman, but I 231 did not know him.

Q. Did you call the lawyer up to verify whether it is so, whether the lawyer told him that? A. I did not.

Mr. Feinberg: I object to that, entirely irrelevant.

The Court: Objection sustained.

Q. Was that the last time you went down there? A. Yes.

Q. Were you ever down to the World Cafeteria? A. Yes.

Q. When was that? A. I was there three times a week prior to his opening, tried to contact the employees; and at no time could I succeed.

Q. Did you ever contact anybody at the World? A. Yes, I did.

Q. When? A. About a week before he opened up.

Q. You just stated you could never contact anybody. A. Any employee known to me, no.

Q. That is all? A. I contacted a man who told me, when I presented my card to him, he was one of the bosses. I gave him my business card and he told me, "We will let you know."

Q. That is all you know about the World Cafeteria—correct? A. That is all I know.

Mr. Delman: I move to strike out the testimony in connection with the Cosmo, if your Honor please. It is certainly not binding on the World Cafeteria.

The Court: I will let it stand; denied.

CHRIS PANOS, of 40 West 95th Street, New York City, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Feinberg.

Q. Mr. Panos, are you an officer of the Cafeteria Employees Union, Local 302, affiliated with the American Federation of Labor? A. Yes.

Q. What office do you hold in that union? A. Associate labor chief.

Q. Do you know how many members there are in the Cafeteria Employees Union, Local 302?

Mr. Delman: Objected to as wholly immaterial.

The Court: Objection sustained.

Q. Did you at any time speak to Mr. Demos Loizides of the World Cafeteria about the picket line in front of his place of business? A. Yes, I did, on the corner.

Q. When was that? A. I don't exactly remember the date; that was after the picket line was established, when I heard about it, and I called him up, because of personal friendship, if I could help him to settle the strike. 236

Q. What did he say to you? A. He said, he referred to his brother at the Cosmo Cafeteria because he is, as he claims, the controlling factor.

Q. He said his brother in the Cosmo Cafeteria was the boss, the controlling factor, whatever his brother said went; is that right? A. That is right.

Mr. Delman: I object to counsel adding words to what the witness says. He said controlling factor; he used the word boss. I move to strike it out. 237

The Court: Denied.

Q. What did you say to him? A. I asked him if I could get in touch with his brother. He gave me the telephone number of the other cafeteria; I called his brother at the Cosmo.

Q. What did his brother say to you? A. He told me that he did not even know what it is all about.

238 what the difference was, what the union wanted. I told him that as an officer of the union, and a personal friend of his, I was interested in settling the trouble without having any further trouble in the shop, and if I could talk to him. He says yes. As a result of the conversation on the phone I went up to his store later.

Q. Was there anybody else with you when you went up to the store? A. Yes; Ralph Del Pino.

Q. The man who just testified? A. That is right.

239 Q. Did you see Mr. Loizides after that? A. Yes, I did, in the store at that time.

Q. Was it that very day? A. That is correct.

Q. What did he say to you? A. I asked him. I told him I came here as a result of a telephone conversation. He said, "Well, since I have spoken to you, I have spoken to my lawyer, I have been advised not to take any action whatsoever, because we are going to court." That is all there was; then we left.

(No cross-examination.)

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240 Tom Anthony, of 954 Jennings Street, Bronx, New York City, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Feinberg.

Q. Mr. Anthony, are you a member of the Cafeteria Employees Union, Local 302? A. Yes.

Q. On May 9, 1939, did you visit the World Cafeteria? A. Yes.

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Q. Did you speak to anybody in the cafeteria, anybody who was working there? A. Yes; I spoke to somebody. I did not know the name.

Q. Do you see the person whom you spoke to in court? A. Yes; that fellow with the mustache.

(The man pointed out stated his name to be Lucas Harris.)

Q. What did Mr. Harris say to you and what did you say to him? A. I said to him—I talked to him about the picket line in front of his store.

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Q. Yes? A. He said to me, "The union put the picket line," but he says, "we are going to fix them, we make everybody bosses, and we are going"——

The Court: I don't hear what you are saying.

A. (Continuing) He says to me, "The boss make us, everybody bosses, and we present to the court the papers, we throw the case out." I says, "What do you mean?" He says to me, "You know, funny papers we present to the court, everybody goes out."

(No cross-examination.)

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RALPH DEL PINO, a witness for defendant, recalled, testified further as follows:

Direct examination by Mr. Feinberg.

Q. Do you know whether the World Cafeteria is what you call a union shop?

Mr. Delman: It is conceded it is not.

Mr. Feinberg: Will you concede that there were no union employees employed there at any time?

Mr. Delman: That is right.

Mr. Feinberg: The people who were working there before this paper was signed did not belong to the union?

Mr. Delman: That is right; at no time.

Mr. Feinberg: The purposes of the union picketing was to get employees to sign an agreement with the union?

Mr. Delman: I assume that is the purpose; I don't know what is in their minds. I have enough intelligence to conceive that is the purpose of picketing.

Mr. Feinberg: Defendant rests.

REBUTTAL.

LOUIS LOIZIDES, of 2104 Crotona Parkway, Bronx, New York City, called as a witness on behalf of the plaintiffs in rebuttal, being first duly sworn, testified as follows:

Direct examination by Mr. Delman.

Q. Do you remember Mr. Del Pino, that gentleman at the extreme right, coming to see you after this injunction proceeding was started—do you remember? A. After the injunction?

Q. Yes, after or before, I don't know; do you remember seeing him in your place of business? A. He came before.

Q. Before? A. Yes.

Q. And you had a conversation with him? A. Well, he asked me to settle with the union.

Q. When was that, how long before? A. It must be a few days before; I don't remember exactly.

Q. Did you see him after that? A. No.

Q. Did you ever have any people working in your place that belongs to the union? A. No.

Q. Did you ever have any disputes with the union before he was down to see you? A. No.

Mr. Feinberg: I object to that line of examination. It is a conclusion of law, in the first place. It asks for the witness' interpretation of Section 876-A of the Civil Practice Act; also on the ground it is immaterial. 248

The Court: Objection overruled.

Q. You may answer. A. What is that?

Q. Did you have any disagreement with the union when he came down to see you? A. No.

Q. What did you tell Mr. Del Pino? A. I told him there was nothing to settle. There are no people working here; they are all partners.

Q. You told him that? A. Yes.

Q. Did you ever see him again? A. Never again. 249

Q. Did you tell him you called up your lawyer and your lawyer told you not to talk to him? A. Nothing of the kind.

(No cross-examination.)

Mr. Delman: That is all, your Honor, on the case of the plaintiff, the World Cafeteria, Angelos; and I renew my offer to

accept the decision of this Court in this case, also in the other case. It seems to me like a needless expenditure of effort, because the point of law is identical.

Mr. Feinberg: If your Honor please, we have not finished with this case yet. I would like to make an offer of proof that the plaintiffs in this case have made absolutely no effort to settle, arbitrate or mediate this dispute as required by the Civil Practice Act, Section 876-A. As a matter of fact, all efforts on behalf of the attorneys or any officer of the union——

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The Court: The plaintiff probably will concede that.

Mr. Delman: I will concede that, and I will direct the Court's attention to the complaint which says this does not come within Section 876-A because there are no employees here. Of course, I concede that we made no efforts, but they are trying to prove an effort here; the Court has not overlooked that. I concede we made no efforts to settle.

Mr. Feinberg: We are trying to prove our efforts were rejected. The burden is on the plaintiff to show they made some

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efforts. Certainly rejecting our efforts is prima facie evidence.

The Court: Let us not get into an argument. The plaintiffs admit they made no efforts to settle any dispute by negotiation with the union.

Mr. Delman: That is correct.

The Court: I will grant the relief to the plaintiffs by restraining the defendant from

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Picketing, on the ground that the plaintiffs are the owners of the establishment, and there are no employees on the premises.

Mr. Feinberg: I ask your Honor to disqualify yourself in the other case.

The Court: What will we do with the next case?

Mr. Feinberg: I submit the Court is disqualified.

The Court: No; there is no place else to send it. I am going to keep it.

Mr. Feinberg: Put the case over until the next term.

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The Court: Have you got a picket there?

Mr. Delman: Certainly; if they will remove the picket we will adjourn the case.

The Court: Yes; if you will remove the picket we will put it over.

Mr. Feinberg: Oh, no.

The Court: Put it down for Tuesday, the 20th. Submit findings on two days' notice.

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Plaintiffs' Exhibit 1.

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:
CITY OF NEW YORK

The undersigned do hereby certify that they now conduct or transact business under the name and style of THE WORLD CAFETERIA, at 838 East 180th Street, Borough of Bronx, City of New York, and do further certify that the true or real full names of the persons conducting the said business, with the residence and business address and the age of any who may be infants, are as

257 follows:

Name	*Residence*	*Business Address*
GUS ANGELOS	266 Hicks Street, Bklyn.	838 E. 180th St. N. Y. C.
JOHN HARRIS	2160 Mapes Avenue, Bronx	838 E. 180th St. N. Y. C.
LUCAS HARRIS	2160 Mapes Avenue, Bronx	838 E. 180th St. N. Y. C.
NICK FELLOUGIS	86 Schermerhorn St. Bklyn.	838 E. 180th St. N. Y. C.
HARRY GALATIS	2067 Mohegan Ave. Bronx	838 E. 180th St. N. Y. C.
MARY WAAL	650 E. 182nd St. Bronx	838 E. 180th St. N. Y. C.
DEMOSTHENES LOIZIDES	2104 Crotona Pkway. Bronx	838 E. 180th St. N. Y. C.

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IN WITNESS WHEREOF we have this 22nd day of April, 1939, made and signed the certificate.

GUS ANGELOS
JOHN HARRIS
LOUIS HARRIS
NICK FELLOUGIS
HARRY GALATIS
MARY WAAL
DEMOSTHENES LOIZIDES

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:
CITY OF NEW YORK

On this 22nd day of April, 1939, before me personally appeared GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WOLL and DEMOSTHENES LOIZIDES, to me known and known to me to be the individuals described in and who executed the foregoing certificate and they thereupon duly acknowledged to me that they executed the same.

JOHN CANARAS 260
Notary Public, Bronx County
Bx Co. Cl. #462
N. Y. Co. Cl. #1072
Com. exp. March 30, 1940

No. 35012

STATE OF NEW YORK,
COUNTY OF BRONX, } ss.:

MICHAEL B. McHUGH, Clerk of the said County and Clerk of the Supreme Court of said State for said County, and Clerk of the County Court for said County, DO CERTIFY, That I have compared the preceding with the original.

Certificate of conducting business 261
under an assumed name

on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original.

Indorsed Filed April 26, 1939.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 19 day of May, 1939.

MICHAEL B. McHUGH,
(Seal) Clerk.

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Plaintiffs' Exhibit 2.

THIS AGREEMENT made this 22nd day of April, 1939, between GUS ANGELOS, of 266 Hicks Street, Brooklyn, N. Y., JOHN HARRIS, of 2160 Mapes Avenue, Bronx, N. Y., LUCAS HARRIS, of 2160 Mapes Avenue, Bronx, N. Y., NICK FELLOUGIS, of 86 Schermerhorn Street, Brooklyn, N. Y., HARRY GALATIS, of 2067 Mohegan Avenue, Bronx, N. Y., MARY WOLL, of 650 East 182nd Street, Bronx, N. Y., and DEMOS LOIZIDES, of 2104 Crotona Parkway, Bronx, N. Y.

263 WITNESSETH:

WHEREAS, the parties to this agreement are desirous of being partners and sole owners of the business now conducted at 838 East 180th Street, Bronx, N. Y., and known as THE WORLD CAFETERIA, and

WHEREAS, each of the parties to this agreement is an experienced cafeteria worker and fully understands the cafeteria business, and thus realizes the advantage of a partnership, where there will be a saving of wages for outside help.

NOW, THEREFORE, it is mutually agreed as follows:

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FIRST: The parties hereto shall, as partners and as more fully set forth hereinafter as to the rights of each party, engage in conducting THE WORLD CAFETERIA above referred to for a term commencing April 22, 1939, and terminating April 30, 1940.

SECOND: The firm name of the said partnership shall be THE WORLD CAFETERIA.

Plaintiffs' Exhibit 2.

THIRD: A certificate of the parties hereto doing business under this name shall be filed immediately upon the execution of these presents in the office of the County Clerk of the County of Bronx, and in the office of any such other County Clerk as THE WORLD CAFETERIA may hereafter do business.

FOURTH: The business of said partnership shall be conducted at 838 East 180th Street, Bronx, N. Y., and at such other place or places as the parties may by a majority vote agree.

FIFTH: The gross assets shall belong to the parties hereto in the proportions hereinafter enumerated and with the exceptions and provisos hereinafter enumerated.

SIXTH: The affairs of the partnership in all matters pertaining to the operation thereof shall be decided upon by the vote of any four (4) of them, by which the other three (3) hereby agree to abide unconditionally and hereby waiving any Court proceedings in case of so being overruled by the vote of four (4) of the partners.

SEVENTH: In view of the different capabilities and duties that will be assigned to each partner, as well as the different degree of experience, the following are the percentages of the net income that each of the partners agrees to accept as his weekly drawing:

GUS ANGELOS, fifteen (15%) per cent; LUCAS HARRIS, twelve (12%) per cent; JOHN HARRIS, twelve (12%) per cent; NICK FELLOUGIS, nine (9%) per cent; HARRY GALATIS, eight (8%) per cent; MARY WOLL, five (5%) per cent; DEMOS LOIZIDES, thirty-nine (39%) per cent.

268 *Plaintiffs' Exhibit 2.*

EIGHTH: In ascertaining the net profits, the following items are to be deducted from the gross income;

(a) The cost of goods sold.

(b) All operating expenses, to wit: rent, light and heat, taxes, insurance, interest, legal and professional expenses, repairs, advertising, bank charges, payments on the conditional sales agreement and mortgage of Twentieth Century Contracting Corporation, or its assignees or assigns, and other miscellaneous operating expenses.

269 NINTH: The value of the cafeteria together with the good will, is hereby fixed between the partners at Fifteen Thousand ($15,000.00) Dollars.

TENTH: Each of the parties hereto agrees, in the event of loss during the period of any three (3) months, to contribute his or her proportionate percentage, in the same proportion as above enumerated, anent, the drawings, such contributions to the losses to be either in cash or by means of deductions from the respective drawings of each.

ELEVENTH: The good will of the cafeteria, as
270 well as the name and all the fixtures and equipment, are to remain the sole and exclusive property of DEMOS LOIZIDES, upon the expiration of this contract, unless each of the other partners pays to DEMOS LOIZIDES his or her proportionate percentage of the assets as the valuation set forth (Fifteen Thousand ($15,000.00) Dollars), unless the business shows a loss by the end of the term of this contract, in which event the total loss shall be deducted from said Fifteen Thousand

($15,000.00) Dollars, in case the partners desire to exercise the option contained in this paragraph.

TWELFTH: The partners shall contribute in the proportions above referred to any additional capital that they may deem necessary for protecting or furthering the interests of the partnership.

THIRTEENTH: If any partner shall, with the written consent of the other partners, advance any monies to the partnership in excess of his contribution to the capital, the amount of such advance shall not be an increase of the capital of such partner or entitle him to any increase in his share of the profits, but the amounts of such advance shall be a debt due to such partner by the partnership and shall bear interest at the rate of six (6%) per cent per annum. Any such advance, with the accrued interest, shall be repaid by the partnership within thirty (30) days after the partnership shall have elected by notice in writing to repay the same or such partner shall have by notice in writing elected to demand the repayment thereof; in no event, however, shall the election of either the partnership or the particular partner be later than a month before the expiration of this agreement or any extension or renewal thereof. 272 273

FOURTEENTH: The account of the partnership shall be maintained under the name of DEMOS LOIZIDES, in such bank or banks as the partners from time to time shall elect and may by a majority vote elect that the checks drawn thereon shall be signed by one other partner in addition to DEMOS LOIZIDES.

274 *Plaintiffs' Exhibit 2.*

FIFTEENTH: Any partner may withdraw his share of the net profits at the end of each or any fiscal year and if a partner shall not withdraw the whole or any part of his share of the net profits, he shall not be entitled to any interest upon any of his profits not withdrawn, nor shall any such profits be deemed an increase of the capital stock or entitle him to an increased percentage of his profits.

SIXTEENTH: Proper books of account shall be kept at all times and shall aways be open to
275 inspection of any of the partners hereto, and each partner shall enter or cause to be entered therein a full and accurate account of all his transactions in behalf of the partnership.

SEVENTEENTH: All books of the partnership shall be kept at the place of business of the partnership and each partner shall have immediate and unstinted access thereto at all times.

EIGHTEENTH: Each partner shall at all times pay and satisfy his own personal debts; devote all his time and attention to the business of the partnership; inform the other partners of all transactions in behalf of the partnership; may not
276 assign or mortgage his share in the partnership or any part thereof or enter into any agreement, as a result of which any person, firm or corporation shall become interested with him therein.

NINETEENTH: None of the partners shall execute any notes in the name of the partnership unless by vote of four (4) of the partners, which vote shall be recorded in any of the books of the partnership and signed by said four (4).

TWENTIETH: Any partner who shall violate any of the terms, provisions and conditions of this agreement shall keep harmless the partnership property and shall also indemnify the other partners from any and all claims, demands and actions which may arise out of or by reason of any such violation of any of the terms, provisions or conditions thereof.

TWENTY-FIRST: If any partner shall be guilty of misconduct of such a character as to render it impracticable for the partners to carry on the partnership business, the offending partner may 278
be expelled from the partnership upon the vote of a majority of the partners, and upon his expulsion he is to be paid one-half ($\frac{1}{2}$) of the share of the net profits received by him during the preceding six (6) months, as well as the amount of the expelled partner's share of the capital in the partnership, less his proportionate share of losses, if any.

TWENTY-SECOND: At the termination of the partnership, by the extension of its term or by reason of any other cause, a full and accurate inventory shall be prepared and the assets, liabilities and income, gross and net, shall be ascertained, and in pursuance of the provisions above 279
outlined, the assets then remaining shall be divided into proportion as above enumerated, and in accordance with all the terms, conditions and provisos above referred to.

TWENTY-THIRD: If any dispute shall arise between the partners herein and they agree to arbitrate same, each partner appointing one arbitra-

tor and the majority of the arbitrators shall have the right to decide, and the right to appeal from the decision of said arbitrators, to any Court or any other body, is hereby expressly waived.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

GUS ANGELOS
LUCAS HARRIS
HARRY GALATIS
281 MARY WAAL
DEMOSTHENES LOIZIDES
NICK FELLOUGIS
JOHN HARRIS

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:
CITY OF NEW YORK }

On this 22nd day of April, 1939, before me personally appeared GUS ANGELOS, LUCAS HARRIS, JOHN HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WOLL and DEMOS LOIZIDES, to me known
282 and known to me to be the individuals described in and who executed the foregoing agreement, and they thereupon duly acknowledged to me that they executed the same.

JOHN CANARAS
Notary Public, Bronx County
Bronx County Clerk No. 162
New York County Clerk's No. 1072
(Seal) Commission expires March 30, 1940

Defendant's Exhibit A

No. 478793

STOCK COMPANY

HARTFORD FIRE INSURANCE COMPANY

INCORPORATED 1810

HARTFORD CONNECTICUT

CHARTER PERPETUAL

Amount, $ 2,000 *Rate* 1.364 *Premium, $* 27.28

In consideration of the Stipulations herein named

and of TWENTY SEVEN AND 28/100 Dollars Premium,

does insure DEMOSTHENES LOIZIDES

and legal representatives, to the extent of the actual cash value (ascertained with proper deductions for depreciation) of the property at the time of loss or damage, but not exceeding the amount which it would cost to repair or replace the same with material of like kind and quality within a reasonable time after such loss or damage, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair and without compensation for loss resulting from interruption of business or manufacture, for the

term of one year

from the 10th day of March 1939, at noon,

to the 10th day of March 1940, at noon,

against all DIRECT LOSS AND DAMAGE BY FIRE and by removal from premises endangered by fire, except as

herein provided, to an amount not exceeding TWO THOUSAND *** Dollars,

to the following described property while located and contained as described herein, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from fire but not elsewhere, to wit:

THE PRINTED FORM OF THIS POLICY WAS APPROVED BY THE INSURANCE COMMISSIONER OF CONNECTICUT

RESTAURANT and GRILL
(including improvements)

AS NOW OR MAY BE HEREAFTER CONSTITUTED.

$ nil ..... On stock consisting principally of provisions, wines, liquors, supplies and on other merchandise, including packages, full and empty.

$ 2,000 ..... On restaurant, bar and kitchen furniture and fixtures of every description, including counters, show cases, linen, plate and plated ware, cutlery, gas and electric fixtures and wiring, crockery, glassware, steam tables, heating and cooking apparatus and plumbing and their connections, soda water fountains, apparatus and appurtenances thereto, tables, chairs, icehouses, partitions, pictures, paintings, engravings and their frames, mirrors, cash registers and adding machines; wearing apparel of the assured and employees; and property of others for which the assured is legally liable, decorations on walls and ceilings, improvements and betterments, window shades, screens, bric-a-brac and all other furniture, fixtures, tools, implements, apparatus, appurtenances, utensils and iron safes, used in the business of a Restaurant, Lunch Room, Cafeteria, Bar and/or Grill, including awnings and signs outside of and attached to building.

All while contained in or attached to the building, additions and extensions thereto, or on and under sidewalks immediately adjoining, situate No. 838 East 180th Street,

Borough of Bronx, City of New York.

This Company agrees to accept and consider the assured in the event of loss or damage in the position of sole and unconditional owner of such improvements and betterments, any contract or lease the assured may have made to the contrary notwithstanding.

Privilege Granted.—For other insurance; for existing communications; to use gas and steam for light, heat and power; to use kerosene oil for lighting, heating and cooking purposes; to work at all hours or to cease operations; to remain unoccupied; for the installation and use of radio receiving apparatus and to use fuel oil system.

Loss, if any, payable in New York City funds.

Chattel Mortgage.—The existence of a chattel mortgage on the above described property shall not invalidate this policy and coverage hereunder is extended to include any such property which may be or become so encumbered or which is being purchased on any instalment or credit plan or conditional bill of sale.

Specific Insurance.—This policy shall not cover any loss on property specifically insured unless the amount of such loss shall exceed the amount of such specific insurance, which said excess only is declared to be under the protection of this policy.

No Control Clause.—This policy shall not be affected by failure of the assured to comply with any of the warranties or conditions endorsed hereon in any portion of the premises over which the assured has no control.

Sidewalk Clause.—The cover of this policy extends to property similar to that hereby insured while on sidewalk adjoining building or buildings herein described, and to the premises outside of said building or buildings, only when within ten feet of the walls of same.

Work and Materials Clause.—Privilege granted for present and other occupancies not more hazardous and to do such work and to keep and use such materials as are usual in such occupancies.

Alterations and Repairs Permit.—(Unsprinklered Risks—Specific Form of Policy).—Permission granted during the life of this policy to employ mechanics to make alterations, additions and repairs, and this policy (so far as it applies to building) shall also cover in accordance with its conditions such alterations or additions and all materials and supplies therein or therefor adjacent thereto, and (so far as it applies to contents of said building) shall extend to cover in such additions.

Alterations and Repairs Permit.—(Sprinklered Risks)—Permission granted during the life of this policy to employ mechanics to make alterations or repairs, and this policy (so far as it applies to the building being altered or repaired) shall also cover in accordance with its conditions all such alterations, materials and supplies therefor, therein or adjacent thereto, but this shall not be held to include the reconstruction or the enlargement of any building herein described. This permission does not waive or modify any of the terms or conditions of the automatic sprinkler clause attached to this policy.

New York Standard Clause Forbidding the Use of Electricity.—There shall be no liability under this policy while electricity is used for light, heat or power in the above described premises, unless permission is endorsed by this Company hereon.

Permit for the Use of Electricity.—Privileged to use electricity in the above mentioned premises for light and/or heat and/or power; it being hereby made a condition of this policy that where the equipment is owned or controlled in whole or in part by the assured, a Certificate shall be obtained from the New York Board of Fire Underwriters, and that no alterations shall be made in that portion of the equipment owned or controlled by the assured after Certificate is issued without notice thereof being given to the said Board.

If electrical appliances or devices of any kind, including wiring, are covered under this policy, this Company shall not be liable for any electrical injury or disturbance to the said electrical appliances, devices or wiring, whether from artificial or natural causes. This limitation to be operative notwithstanding any provision to the contrary in the Lightning Clause (if any) attached.

as their interest may appear, while contained in or attached to the building, additions and extensions thereto, or on and under sidewalks immediately adjoining, situate No. 838 East 180th Street,

Borough of Bronx, City of New York.

This Company agrees to accept and consider the assured in the event of loss or damage in the position of sole and unconditional owner of such improvements and betterments, any contract or lease the assured may have made to the contrary notwithstanding.

Privilege Granted.—For other insurance; for existing communications; to use gas and steam for light, heat and power; to use kerosene oil for lighting, heating and cooking purposes; to work at all hours or to cease operations; to remain unoccupied; for the installation and use of radio receiving apparatus and to use fuel oil system.

Loss, if any, payable in New York City funds.

Chattel Mortgage.—The existence of a chattel mortgage on the above described property shall not invalidate this policy and coverage hereunder is extended to include any such property which may be or become so encumbered or which is being purchased on any instalment or credit plan or conditional bill of sale.

Specific Insurance.—This policy shall not cover any loss on property specifically insured unless the amount of such loss shall exceed the amount of such specific insurance, which said excess only is declared to be under the protection of this policy.

No Control Clause.—This policy shall not be affected by failure of the assured to comply with any of the warranties or conditions endorsed hereon in any portion of the premises over which the assured has no control.

Sidewalk Clause.—This cover of this policy extends to property similar to that hereby insured while on sidewalk adjoining building or buildings herein described, and to the premises outside of said building or buildings, only when within ten feet of the walls of same.

Work and Materials Clause.—Privilege granted for present and other occupancies not more hazardous and to do such work and to keep and use such materials as are usual in such occupancies.

Alterations and Repairs Permit.—(Unsprinklered Risks—Specific Form of Policy).—Permission granted during the life of this policy to employ mechanics to make alterations, additions and repairs, and this policy (so far as it applies to building) shall also cover in accordance with its conditions such alterations or additions and all materials and supplies therein or therefor adjacent thereto, and (so far as it applies to contents of said building) shall extend to cover in such additions.

Alterations and Repairs Permit.—(Sprinklered Risks)—Permission granted during the life of this policy to employ mechanics to make alterations or repairs, and this policy (so far as it applies to the building being altered or repaired) shall also cover in accordance with its conditions all such alterations, materials and supplies therefor, therein or adjacent thereto, but this shall not be held to include the reconstruction or the enlargement of any building herein described. This permission does not waive or modify any of the terms or conditions of the automatic sprinkler clause attached to this policy.

New York Standard Clause Forbidding the Use of Electricity.—There shall be no liability under this policy while electricity is used for light, heat or power in the above described premises, unless permission is endorsed by this Company hereon.

Permit for the Use of Electricity.—Privileged to use electricity in the above mentioned premises for light and/or heat and/or power; it being hereby made a condition of this policy that where the equipment is owned or controlled in whole or in part by the assured, a Certificate shall be obtained from the New York Board of Fire Underwriters, and that no alterations shall be made in that portion of the equipment owned or controlled by the assured after Certificate is issued without notice thereof being given to the said Board.

If electrical appliances or devices of any kind, including wiring, are covered under this policy, this Company shall not be liable for any electrical injury or disturbance to the said electrical appliances, devices or wiring, whether from artificial or natural causes. This limitation to be operative notwithstanding any provision to the contrary in the Lightning Clause (if any) attached.

Lightning Clause.—This policy shall cover any direct loss or damage caused by Lightning (meaning thereby the commonly accepted use of the term Lightning, and in no case to include loss or damage by cyclone, tornado or wind-storm), not exceeding the sum insured, nor the interest of the insured in the property, and subject in all other respects to the terms and conditions of this policy. *Provided, however,* if there shall be any other insurance on said property this Company shall be liable only *pro-rata* with such other insurance for any direct loss by Lightning, whether such other insurance be against direct loss by Lightning or not.

New York Standard Average Clause.—This Company shall not be liable for a greater proportion of any loss or damage to the property described herein than the sum hereby insured bears to eighty per cent. (80 %) of the actual cash value of said property at the time such loss shall happen, nor for more than the proportion which this policy bears to the total insurance thereon.

In the event that the aggregate claim for any loss is both less than ten thousand dollars ($10,000) and less than five per cent. (5%) of the total amount of insurance upon the property described herein at the time such loss occurs, no special inventory or appraisement of the undamaged property shall be required.

If the insurance under this policy be divided into two or more items, the foregoing shall apply to each item separately.

Civil Authorities Clause attached.

Attached to Policy No. 478793 of the HARTFORD FIRE INS. CO.

Signed

F. W. COOPER PUBLISHER 7 DUTCH ST. N. Y.
FORM NO. 97

PERSONAL PROPERTY OUTSIDE OF BUILDINGS

The cover of this policy extends to property similar to that hereby insured while in cars on switches or sidetracks when such cars are on premises described or within 100 feet of buildings described in policy; or in the open on premises, or on platforms in contact with buildings described in policy; or on sidewalks, streets, alleys or detached platforms, when within 50 feet of buildings described in policy.

CIVIL AUTHORITIES CLAUSE

This policy is extended to insure against direct loss and damage to the described property caused by acts of destruction executed by duly constituted civil authority at the time of and only during a conflagration when necessary for the purpose of retarding the same; subject, however, to all other terms and conditions of the policy.

Form 3682[00]

ENDORSEMENT

New York, May 24,1939

Interest of this policy now vested in World Cafeteria,as is now or may be hereafter constituted,and not as heretofore.

Loss, if any, payable to assured.

Not valid unless attached to Policy No. 478793

HARTFORD FIRE INSURANCE COMPANY, HARTFORD, CONN.

Wa

George W Cleveland

Signature for Company.

In Witness Whereof, this company has executed and attested these presents, but this policy shall not be valid until countersigned by the Manager of the NEW YORK CITY DEPARTMENT of the company at NEW YORK, N. Y.

Lloyd P Smith

Secretary

A H Bissell

President

George W Cleveland

Manager

Countersigned at NEW YORK, N. Y.

this 10th *day of* April *19* 39

Fraud, misrepresentation, etc. This entire policy shall be void if the insured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

Uninsurable and Excepted property. This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money, notes or securities; nor, unless specifically named hereon in writing, bullion, manuscripts, mechanical drawings, dies or patterns.

Hazards not covered. This Company shall not be liable for loss or damage caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, or military or usurped power, or by order of any civil authority; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises.

This entire policy shall be void, unless otherwise provided by agreement in writing added hereto,

Ownership, etc. (a) if the interest of the insured be other than unconditional and sole ownership; or (b) if the subject of insurance be a building on ground not owned by the insured in fee simple; or (c) if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property insured hereunder by reason of any mortgage or trust deed; or (d) if any change, other than by the death of an insured, take place in the interest, title or possession of the subject of insurance (except change of occupants without increase of hazard); or (e) if this policy be assigned before a loss.

Unless otherwise provided by agreement in writing added hereto this Company shall not be liable for loss or damage occurring

Other insurance. (a) while the insured shall have any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or

Increase of hazard. (b) while the hazard is increased by any means within the control or knowledge of the insured; or

Repairs, etc. (c) while mechanics are employed in building, altering or repairing the described premises beyond a period of fifteen days; or

Explosives, gas, etc. (d) while illuminating gas or vapor is generated on the described premises; or while (any usage or custom to the contrary notwithstanding) there is kept, used or allowed on the described premises fireworks, greek fire, phosphorus, explosives, benzine, gasoline, naphtha or any other petroleum product of greater inflammability than kerosene oil, gunpowder exceeding twenty-five pounds, or kerosene oil exceeding five barrels; or

Factories. (e) if the subject of insurance be a manufacturing establishment while operated in whole or in part between the hours of ten P. M. and five A. M., or while it ceases to be operated beyond a period of ten days; or

Unoccupancy. (f) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of ten days; or

Explosion, lightning. (g) by explosion or lightning, unless fire ensue, and, in that event, for loss or damage by fire only.

Chattel mortgage. Unless otherwise provided by agreement in writing added hereto this Company shall not be liable for loss or damage to any property insured hereunder while incumbered by a chattel mortgage, and during the time of such incumbrance this Company shall be liable only for loss or damage to any other property insured hereunder.

Fall of building. If a building, or any material part thereof, fall except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

Pro rata liability. This Company shall not be liable for a greater proportion of any loss or damage than the amount hereby insured shall bear to the whole insurance covering the property, whether valid or not and whether collectible or not.

Noon. The word "noon" herein means noon of standard time at the place of loss or damage.

Mortgage interests. If loss or damage is made payable, in whole or in part, to a mortgagee not named herein as the insured, this policy may be canceled as to such interest by giving to such mortgagee a ten days' written notice of cancellation. Upon failure of the insured to render proof of loss such mortgagee shall, as if named as insured hereunder, but within sixty days after notice of such failure, render proof of loss and shall be subject to the provisions hereof as to appraisal and times of payment and of bringing suit. On payment to such mortgagee of any sum for loss or damage hereunder, if this Company shall claim that as to the mortgagor or owner, no liability existed, it shall, to the extent of such payment be subrogated to the mortgagee's right of recovery and claim upon the collateral to the mortgage debt, but without impairing the mortgagee's right to sue; or it may pay the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of such mortgagee may be added hereto by agreement in writing.

Requirements in case of loss. The insured shall give immediate notice in writing, to this Company, of any loss or damage, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, stating the quantity and cost of each article and the amount claimed thereon; and, **the insured shall, within sixty days after the fire, unless such time is extended in writing by this Company, render to this Company a proof of loss,** signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the fire, the interest of the insured and of all others in the property, the cash value of each item thereof and the amount of loss or damage thereto, all incumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish a copy of all the descriptions and schedules in all policies and if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this Company all that remains of any property herein described, and submit to examinations under oath by any person named by this Company and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal. In case the insured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire then, on request of the insured or this Company, such umpire shall be selected by a judge of a court of record in the state in which the property insured is located. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item; and failing to agree, shall submit their differences only, to the umpire. An award in writing, so itemized, of any two when filed with this Company

gage or trust deed; or (d) if any change, other than by the death of an insured, take place in the interest, title or possession of the subject of insurance (except change of occupants without increase of hazard); or (e) if this policy be assigned before a loss.

Unless otherwise provided by agreement in writing added hereto this Company shall not be liable for loss or damage occurring

Other insurance. (a) while the insured shall have any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or

Increase of hazard. (b) while the hazard is increased by any means within the control or knowledge of the insured; or

Repairs, etc. (c) while mechanics are employed in building, altering or repairing the described premises beyond a period of fifteen days; or

Explosives, gas, etc. (d) while illuminating gas or vapor is generated on the described premises; or while (any usage or custom to the contrary notwithstanding) there is kept, used or allowed on the described premises fireworks, greek fire, phosphorus, explosives, benzine, gasoline, naphtha or any other petroleum product of greater inflammability than kerosene oil, gunpowder exceeding twenty-five pounds, or kerosene oil exceeding five barrels; or

Factories. (e) if the subject of insurance be a manufacturing establishment while operated in whole or in part between the hours of ten P. M. and five A. M., or while it ceases to be operated beyond a period of ten days; or

Unoccupancy. (f) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of ten days; or

Explosion, lightning. (g) by explosion or lightning, unless fire ensue, and, in that event, for loss or damage by fire only.

Chattel mortgage. Unless otherwise provided by agreement in writing added hereto this Company shall not be liable for loss or damage to any property insured hereunder while incumbered by a chattel mortgage, and during the time of such incumbrance this Company shall be liable only for loss or damage to any other property insured hereunder.

Fall of building. If a building, or any material part thereof, fall except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

Added clauses. The extent of the application of insurance under this policy and of the contribution to be made by this Company in case of loss or damage, and any other agreement not inconsistent with or a waiver of any of the conditions or provisions of this policy, may be provided for by agreement in writing added hereto.

Waiver. No one shall have power to waive any provision or condition of this policy except such as by the terms of this policy may be the subject of agreement added hereto, nor shall any such provision or condition be held to be waived unless such waiver shall be in writing added hereto, nor shall any provision or condition of this policy or any forfeiture be held to be waived by any requirement, act or proceeding on the part of this Company relating to appraisal or to any examination herein provided for; nor shall any privilege or permission affecting the insurance hereunder exist or be claimed by the insured unless granted herein or by rider added hereto.

Cancellation of policy. This policy shall be canceled at any time at the request of the insured, in which case the Company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be canceled at any time by the Company by giving to the insured a five days' written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

damage, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, stating the quantity and cost of each article and the amount claimed thereon; and, **the insured shall, within sixty days after the fire, unless such time is extended in writing by this Company, render to this Company a proof of loss,** signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the fire, the interest of the insured and of all others in the property, the cash value of each item thereof and the amount of loss or damage thereto, all incumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish a copy of all the descriptions and schedules in all policies and if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this Company all that remains of any property herein described, and submit to examinations under oath by any person named by this Company and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof, if originals be lost, at such reasonable time and place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal. In case the insured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire then, on request of the insured or this Company, such umpire shall be selected by a judge of a court of record in the state in which the property insured is located. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item; and failing to agree, shall submit their differences only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

Company's options. It shall be optional with this Company to take all, or any part, of the articles at the agreed or appraised value, and also to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required; but

Abandonment. there can be no abandonment to this Company of any property.

When loss payable. The amount of loss or damage for which this Company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this Company and ascertainment of the loss or damage is made either by agreement between the insured and this Company expressed in writing or by the filing with this Company of an award as herein provided.

Suit. No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, nor unless commenced within twelve months next after the fire.

Subrogation. This Company may require from the insured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

HARTFORD FIRE INSURANCE COMPANY

INCORPORATED 1810

DIRECTORS

R. M. BISSELL

WALTER L. GOODWIN	F. SPENCER GOODWIN
SAMUEL FERGUSON	WILLIAM MAXWELL
PHILIP B. GALE	PORTER B. CHASE
GEORGE S. STEVENSON	JAMES L. THOMSON
JOSEPH R. ENSIGN	H. BISSELL CAREY

EXECUTIVE OFFICERS

R. M. BISSELL, PRESIDENT

JAMES L. THOMSON
CHAIRMAN FINANCE COMMITTEE

JAMES WYPER, VICE-PRESIDENT	F. C. WHITE, VICE-PRESIDENT
JAMES L. THOMSON, VICE-PRESIDENT	C. S. KREMER, VICE-PRESIDENT
C. S. TIMBERLAKE, MARINE VICE-PRESIDENT	CLYDE P. SMITH, SECRETARY
JOHN M. HOLMES, SECRETARY	A. W. TYROL, SECRETARY
M. G. WIGHT, SECRETARY	J. S. GILBERTSON, MARINE SECRETARY

EASTERN DEPARTMENT
HARTFORD BUILDING
HARTFORD, CONN.

SOUTHERN DEPARTMENT
W. R. PRESCOTT, GENERAL AGENT
ATLANTA, GA.

PACIFIC DEPARTMENT
JOY LICHTENSTEIN, MANAGER
SAN FRANCISCO, CAL.

WESTERN DEPARTMENT
SMITH & WHEELER, MANAGERS
CHICAGO, ILL.

SUPREME COURT - BRONX CO.
FILED
JUN 14 1939
C. D. [illegible]SHIRE, Sten'k

NEW YORK, N. Y.

Standard Fire Insurance Policy of the State of New York

Expires March 10th, 1940

Property #838 East 180th Street, Bronx, New York

Amount . . . . $ 2,000

Premium . . . $ 27.28

Demosthenes Loizides

~~$ 15/00~~

No. 478793

Richard F. Haarmann

HARTFORD FIRE INSURANCE COMPANY

HARTFORD, CONN.

RICHARD F. HAARMANN
INSURANCE
[illegible] MADISON AVE. NEW YORK N.Y.
[illegible]

covering the same property read exactly alike. If they do not they should be made uniform at once.

Receipt for Return Premium

To be Signed by the Assured

Agency, ... *19* .....

In Consideration of ..... *Dollars*

return premium, receipt of which is hereby acknowledged, this policy is hereby canceled and surrendered to the company.

..... *Assured.*

No. of Policy .....

No. of Renewal .....

Amount insured, $ .....

Date of cancellation, | Year | Month | Day |

Date of Policy, | | | |

Time in force, ...

Premium paid, $ .....

Premium earned at ..... *rate,* $ .....

Premium returned, $ .....

IF PRO RATA, STATE REASON WHY

YOUR POLICY CAN BE EXTENDED TO COVER—

OIL BURNER SMUDGE DAMAGE,
WINDSTORM, HAIL, EXPLOSION,
RIOT, AIRCRAFT, AND
MOTOR VEHICLE DAMAGE

For a slight additional charge

CONSULT YOUR BROKER

Form 53144

NOTICE

In compliance with instructions from the SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, to every insurance company, this policy, IF NOT WANTED, must be returned promptly for cancellation; otherwise an EARNED PREMIUM WILL BE CHARGED for the time the policy is in force.

Form 53111

Defendants' Exhibit A.

Insurance Policy issued by Hartford Fire Insurance Company for 838 East 180th Street, No. 478,793, expiring March 10, 1940.

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Defendants' Exhibit B.

Permit to Demosthenes Loizides for Restaurant at 838 East 180th Street.

(Omitted pursuant to stipulation at page 97.)

Statement as to Evidence.

The foregoing case contains all of the evidence adduced and proceedings had upon the trial herein, together with the exceptions of both sides
287 taken on said trial.

Affidavit of No Opinion.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

IRVING R. FEINBERG, being duly sworn, says:

That he is an attorney associated with Boudin, Cohn & Glickstein, the attorneys for the defendants-appellants in this action, and is familiar with the same. That no opinion in writing was
288 rendered herein by the Justice who presided at the trial of this action.

IRVING R. FEINBERG.

Sworn to before me this
15th day of January, 1942

JEAN TAYLOR,
Notary Public,
Bronx County.
Certificate filed in New York County.
Comm. expires March 30, 1943.

289

Stipulation as to Defendants' Exhibit B.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WAAL and DEMOSTHENES LOIZIDES, co-partners trading under the name of THE WORLD CAFETERIA,

Plaintiffs,

against

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WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES' UNION, LOCAL 302, an unincorporated association having more than seven members, individually and as President of said union,

Defendants.

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties hereto, that Defendants' Exhibit B herein consists of a permit issued by the Department of Health of the City of New York in the month of June, 1938, to Demosthenes Loizides, to conduct and maintain a restaurant at No. 838 East 180th 291 Street, in the Borough of Bronx, City of New York.

Dated: New York, N. Y., December 27, 1941.

DAVID L. DELMAN,
Attorney for Plaintiffs.

BOUDIN, COHN & GLICKSTEIN,
Attorneys for Defendants.

292

Stipulation Settling Case.

IT IS HEREBY STIPULATED that the foregoing record contains all the evidence given upon the trial of this action, together with the exceptions of both sides taken on said trial, and that the same be settled and ordered on file as the case on appeal and annexed to the judgment roll herein.

Dated, New York, January 15th, 1942.

BOUDIN, COHN & GLICKSTEIN,
Attorneys for Defendants-Appellants.

293

DAVID L. DELMAN,
Attorney for Plaintiffs-Respondents.

Order Settling Case.

On the above stipulation, I HEREBY CERTIFY that the foregoing record contains all the evidence given on the trial of this action, together with the exceptions of both sides taken on said trial, and the said record is hereby settled and ordered on file as the case on appeal in this action.

Dated, New York, January 19, 1942.

294

TIMOTHY A. LEARY,
J. S. C.

295

Stipulation Waiving Certification.

Pursuant to Section 170 of the Civil Practice Act,

IT IS HEREBY STIPULATED that the foregoing consists of true and correct copies of the notice of appeal, judgment roll, and case and exceptions as settled, and of the whole thereof, now on file in the office of the Clerk of the County of Bronx, and that certification thereof by the Clerk of said County, pursuant to Section 616, is hereby waived.

Dated, New York, January 15th, 1942.

296

BOLDIN, COHN & GLICKSTEIN,
Attorneys for Defendants-Appellants.

DAVID L. DELMAN,
Attorney for Plaintiffs-Respondents.

Order Filing Record in Appellate Division.

Pursuant to Section 616 of the Civil Practice Act; it is

ORDERED that the foregoing printed record be filed in the office of the Clerk of the Appellate Division of the Supreme Court in the First Department. 297

Dated, New York, January 19, 1942.

TIMOTHY A. LEARY,
J. S. C.

298

Notice of Appeal to Court of Appeals.

SUPREME COURT

OF THE STATE OF NEW YORK,

BRONX COUNTY.

GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WAAL and DEMOSTHENES LOIZIDES, co-partners, trading under the name of the WORLD CAFETERIA,

Plaintiffs,

299 against

WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES UNION, LOCAL 302, an unincorporated association having more than seven members, individually and as president of said union;

Defendant.

Sirs:

PLEASE TAKE NOTICE that the defendant William Mesevich, President of the Cafeteria Employees Union Local 302, hereby appeals to the Court of Appeals of the State of New York from the judgment dated the 17th day of April, 1942, and en-
300 tered in the office of the Clerk of the County of Bronx on the said date, which judgment was entered upon an order of the Appellate Division of the Supreme Court dated the 10th day of April, 1942, and entered in the office of the Clerk of said Court on said date, affirming, two Justices dissenting, the judgment entered in the office of the Clerk of the County of Bronx on the 20th day of September, 1939; and that this appeal is taken from the whole of said judgment and order and from each and every part thereof.

Notice of Appeal to Court of Appeals. 301

PLEASE TAKE FURTHER NOTICE that the appeal is taken upon the following ground, among others:

That said judgment and order are violative of Constitution of the United States, particularly Amendments I, V and XIV thereof, and the Constitution of the State of New York, particularly Article 1, Section 8, thereof.

Dated, April 22, 1942.

Yours, etc.,

BOUDIN, COHN & GLICKSTEIN, 302
Attorneys for Defendant.
20 West 43rd Street,
Borough of Manhattan,
City of New York.

To:

MICHAEL McHUGH,
Clerk of County of Bronx.

DAVID L. DELMAN, Esq.,
Attorney for Plaintiffs,
261 Broadway,
Borough of Manhattan,
City of New York.

303

304

Order of Affirmance.

At a term of the Appellate Division of the Supreme Court, held in and for the First Judicial Department in the County of New York, on the 10th day of April, 1942.

Present—Hon. FRANCIS MARTIN,
Presiding Justice,
" ALFRED H. TOWNLEY,
" EDWARD S. DORE,
" ALBERT COHN,
" JOSEPH M. CALLAHAN,
305 *Justices*.

GUS ANGELOS, etc., et al, Respondents, against WILLIAM MESEVICH, Appellant.	11535

An appeal having been taken to this Court by the defendants from a judgment of the Supreme Court, Bronx County entered on the 20th day of September, 1939, and said appeal having been
306 argued by Mr. Irving Robert Feinberg, of counsel for the appellants, and by Mr. David L. Delman, of counsel for the respondents; and due deliberation having been had thereon,

It is ordered and adjudged that the judgment so appealed from be and the same is hereby, in all things, affirmed; and that the respondents recover of the appellants the costs of this appeal. Two

of the Justices dissent and vote to reverse and dismiss the complaint.

Enter,

F. M.

Judgment of Affirmance.

SUPREME COURT

OF THE STATE OF NEW YORK,

BRONX COUNTY. 308

GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WAAL and DEMOSTHENES LOIZIDES, co-partners, trading under the name of the WORLD CAFETERIA, Respondents, against	Plaintiff's address 838 E. 189th Street, Bronx, New York City
WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES UNION, LOCAL 302, an unincorporated association having more than seven members, individually and as president of said union, Appellant.	Defendant's address 701 Eighth Avenue New York City

309

The defendants having appealed to the Appellate Division from a judgment in favor of the plaintiffs, enjoining the defendants permanently from picketing the defendant's place of business and the Appellate Division, by its order, dated April 10, 1942, having affirmed the judgment together with costs and disbursements, and the costs having been taxed at $77.73, it is

310 *Judgment of Affirmance.*

On motion of David L. Delman, attorney for the plaintiffs,

ORDERED, that the plaintiffs, Gus Angelos, John Harris, Lucas Harris, Nick Fellougis, Harry Galatis, Mary Waal and Demosthenes Loizides, co-partners, trading under the name of the World Cafeteria, have judgment against the defendants in the sum of $77.73, and the plaintiffs have execution therefor.

MICHAEL B. McHUGH,
Clerk.

311 April 17, 1942.

Memorandum Opinion of Appellate Division.

(N. Y. Law Journal, April 11, 1942.)

By MARTIN, P.J.; TOWNLEY, DORE, COHN and CALLAHAN, J.J.

11535. Angelos et al., res., v. Mesevich etc., ap—Judgment affirmed, with costs. No opinion. (Dore and Callahan JJ., dissent and vote to reverse and dismiss the complaint on the ground that the al-
312 leged partnerships among the plaintiffs are not bona fide. The testimony clearly indicates that the relationship of employer and employee continued to exist among these parties.) Order filed.

313

Affidavit of No Opinion by Appellate Division.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

IRVING R. FEINBERG, being duly sworn, deposes and says that he is an attorney associated with Boudin, Cohn & Glickstein, the attorneys for the defendant-appellant in this action; that no opinion was rendered by the Appellate Division of the Supreme Court for the First Department in affirming the judgment appealed from herein, except the memorandum printed hereinabove.

314 IRVING R. FEINBERG.

Sworn to before me this
day of June, 1942.

JEAN TAYLOR,
Notary Public,
New York County.
Commission expires March 30, 1944.

315

316

Stipulation Waiving Certification in Court of Appeals.

Pursuant to Section 170 of the Civil Practice Act, it is hereby stipulated that the foregoing consists of true and correct copies of the record on appeal to the Appellate Division, the notice of appeal to the Court of Appeals, the order of affirmance, the judgment of affirmance, and the memorandum of the Appellate Division of the Supreme Court for the First Department, and the whole thereof, now on file in the office of the Clerk of the County of Bronx; and certification thereof, pursuant to Section 616 of the Civil Practice Act,
317 is hereby waived.

Dated, New York, June , 1942.

BOUDIN, COHN & GLICKSTEIN,
Attorneys for Defendant-Appellant.

DAVID L. DELMAN,
Attorney for Plaintiffs-Respondents.

318

319

Remittitur.

COURT OF APPEALS

STATE OF NEW YORK, ss.:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 21st day of January in the year of our Lord one thousand nine hundred and forty-three, before the Judges of said Court.

Witness,

The Honorable IRVING LEHMAN, 320
Chief Justice, Presiding.
John Ludden, Clerk.

Remittitur January 21, 1943

GUS ANGELOS and ors.,
co-partners tc.,
Respondents,

against

WILLIAM MESEVICH, President of the Cafeteria Employees Union Local 302, an unincorporated association tc., 321
Appellant.

BE IT REMEMBERED, That on the 27th day of June in the year of our Lord one thousand nine hundred and forty-two William Mesevich, President of Cafeteria Employees Union Local 302, tc., the appellant in this cause, came here unto the Court of Appeals, by Boudin, Cohn and Glickstein, his attorneys, and filed in the said Court

a Notice of Appeal and return thereto from the judgment and order of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Gus Angelos and ors., co-partners, &c., the respondents in said cause, afterwards appeared in said Court of Appeals by David L. Delman, their attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. Louis B. Boudin
323 of counsel for the appellant, and submitted by counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, with costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

THEREFORE, it is considered that the said judgment be affirmed with costs as aforesaid.

324

And hereupon, as well the Notice of Appeal, and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and

325

which record now remains in the said Supreme Court before the Justices thereof, etc.

JOHN LUDDEN
Clerk of the Court of Appeals
of the State of New York

COURT OF APPEALS, CLERK'S OFFICE
Albany, January 21, 1943

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto. 326

JOHN LUDDEN
(Seal) Clerk

No. 74382

STATE OF NEW YORK, }
COUNTY OF BRONX, } ss.:

I, MICHAEL B. MCHUGH, Clerk of the said County and Clerk of the Supreme Court of said State for said County, and Clerk of the County Court for said County, DO CERTIFY, That I have compared the preceding with the original Remittitur of Court of Appeals on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original 327

Indorsed Filed Feb. 18, 1943

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 26 day of Feb., 1943.

MICHAEL B. MCHUGH
(Seal) Clerk.

328

Clerk's Certificate.

No. 53

State of New York, County of Bronx, } ss.:

Gus Angelos and ors., Co-partners, etc.,
Respondents,

against

William Mesevich, Pres. of the Cafeteria Employees Union, etc.,
Appellants.

329 I, Michael B. McHugh, Clerk of the Supreme Court in and for said County, and Clerk of the Supreme Court of said State, and Clerk of the County Court, County of Bronx, do hereby certify that the foregoing consists of certified copies of the Notice of Appeal, Judgment Roll, Record on appeal and the remittitur dated January 21st, 1943 of the Court of Appeals, State of New York, on file in my office.

In Witness Whereof, I have hereunto set my hand and affixed my official (Seal) seal, this 17th day of March, A. D. 1943.

330 Michael B. McHugh
Clerk.

331

Certificate as to Opinion.

STATE OF NEW YORK
COURT OF APPEALS,
STATE REPORTER'S OFFICE } ss.:

I, E. J. DIMOCK, Reporter of the Court of Appeals of the State of New York, do hereby certify that I have compared the annexed copy of opinion in the case of Angeles v. Mesevich, decided by the Court of Appeals on the twenty-first day of January, 1943, with the official opinion rendered in such case, and I further certify that the same is a true and correct copy of said opinion and of each and every part thereof.

332

IN WITNESS WHEREOF, I have hereunto affixed my signature as Reporter of the Court of Appeals, at the City of Albany, in the State of New York, this eighth day of March, 1943.

(Seal)

E. J. DIMOCK
As Reporter of the Court of Appeals of the State of New York.

Attest:
L. S. JOHN LUDDEN
Clerk of the Court of Appeals.

333

STATE OF NEW YORK
COURT OF APPEALS. }

I, IRVING LEHMAN, Chief Judge of the Court of Appeals of the State of New York, the highest Appellate Court and Court of Record in and for said State, do hereby certify that John Ludden is the clerk of said court, having custody of the

seal of said court and of the decisions, minutes and records thereof, and that E. J. Dimock is the official reporter of said court, having custody of the official opinions, written and handed down by said court and the members thereof, and of the official publication and reports thereof; and I further certify that the attestation and authentication, by said clerk and said reporter of the annexed copy of the official opinion rendered in the case of Angelos v. Mesevich, decided by the said Court of Appeals on the 21st day of January, 1943, is in due form and sufficient under the
335 laws of the State of New York and the rules and practice of the said Court of Appeals; that the seal imprinted thereon is the true and genuine seal of the said Court of Appeals, and that the signature of John Ludden, as clerk of said court, appended thereto is the true and genuine signature of said John Ludden, and the signature of E. J. Dimock, as reporter of said court, appended thereto is the true and genuine signature of said E. J. Dimock.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature at the Chambers of said court at the Court
336 of Appeals Hall, in the City of Albany and State of New York on the eighth day of March in the year one thousand nine hundred and forty-three.

IRVING LEHMAN
As Chief Judge of the Court of Appeals of the State of New York.

337

Opinion of Court of Appeals.

Gus Angelos et al., Copartners Trading under the Name of The World Cafeteria, Respondents, *v.* William Mesevich, Individually and as President of the Cafeteria Employees Union, Local 302, Appellants.

(Decided January 21, 1943.)

Appeal by defendants from a judgment of the Appellate Division, first department, which affirmed by a divided court a decree of the Supreme Court of the County of Bronx (Leary, J.) granting a permanent injunction. 338

Louis B. Boudin and *Irving R. Feinberg*, for appellants.

David L. Delman for respondents.

Rippey, J. After due trial of issues framed according to our practice, the Supreme Court, on the equity side, made findings of fact and conclusions of law upon which it granted a permanent injunction restraining and enjoining the defendants "from stationing pickets at or near the plaintiffs' place of business at 838 East 180th Street, Borough of the Bronx, City of New York, and from interfering with the plaintiffs' customers who may seek to enter their place of business, or to prevent by coercion or otherwise any customers of the plaintiffs seeking to enter plaintiffs' place of business, and from interfering in any other wise with the plaintiffs' business." Since the findings of fact were based upon sufficient evidence to support them, and the Appellate Division has affirmed the decree and made no new 339

findings of fact, the findings of fact made by the trial court are not open for review by the Court of Appeals (Civ. Pr. Act, § 605), nor are we permitted to make new and additonal findings of fact to form a basis to sustain the contention of the defendants. We must take the findings as made and determine the questions of law raised thereby.

The action was brought to restrain defendants from picketing plaintiffs' premises and business and from illegally interfering with and injuring that business. There is nothing within the allegations of the complaint which brings the action 341
within the provisions of section 876-a of the Civil Practice Act of this State. For that reason, among others, defendants contend that the judgment below must be set aside. The primary and principal issue litigated at the trial as raised by the answer was whether a "labor dispute" existed between the parties within the meaning, purpose and intendment of that act as construed by our State courts. to support defendants' contention, they argue that a labor dispute existed between the plaintiff Loizides, who is claimed to have been operating a cafeteria at the location above specified with various non-union employees prior to April 22, 1939, and the defendants, and that such dispute held 342
over and continued between the plaintiffs in this action and the defendants subsequent to that date. There are no findings of fact to support any such contention. The facts as found show that the defendants established a picket line at and near the cafeteria on or about April 15, 1939. On April 22, 1939, the plaintiffs in this action formed a partnership in accordance with the provisions of

our partnership statute (Partnership Law, Cons. Laws ch. 39) and filed a certificate as required by law that it was conducting business at the place indicated as "The World Cafeteria." Subsequently this action was commenced. Defendants sought to show that the partnership was a fraud and sham and not a *bona fide* partnership, that only one individual owned and operated the business, and that the other plaintiffs were merely employees. Upon conflicting evidence it has been found as matters of fact, conclusively binding on this court, that the plaintiffs were partners and, as such, sole owners and operators of the cafe- 344
teria, that the partnership was a valid partnership, and that plaintiffs as members of the partnership did all the work in connection with said cafeteria without any outside assistance. The trial court refused to find as requested by defendants, that the partnership was a fictitious arrangement among the plaintiffs entered into solely for the purpose of avoiding the unionization of the World Cafeteria and of applying to the court for an injunction restraining the defendant union from picketing the cafeteria, and that refusal to find has necessarily been approved by the lower court upon appeal. It has been specifically found that there was no "labor dispute" between the 345
plaintiffs and any employees, or between the plaintiffs and the defendants, within the purview of section 876-a of the Civil Practice Act, that no employee of the plaintiffs ceased working because of any dispute as to the rate of wages or any other acts of the plaintiffs, and that no strike has ever been called at the plaintiffs' place of business. The mere fact that no strike has been

called does not make the picketing unlawful. (*Exchange Bakery & Restaurant, Inc.* v. *Rifkin*, 245 N. Y. 260, 263.) Nevertheless, there can be no labor dispute within the meaning of section 876-a unless there is employment. (*Baillis* v. *Fuchs*, 283 N. Y. 133, 137.) Upon the facts as found in this case, the partnership comes within the reasoning of and is controlled by the decision in *Thompson* v. *Boekhout* (273 N. Y. 390). The partnership was not a legal entity in the sense that its members were employees as in the case of a corporation. (*Borough Park Sanitary Live Poul-*
347 *try Market, Inc.* v. *Heller*, 280 N. Y. 481.) The findings in this case give us no information as to whether the objective of the defendants was proscribed as in *Opera on Tour, Inc.* v. *Weber* (285 N. Y. 348) or lawful as in *Wohl* v. *Bakery & Pastry Drivers & Helpers Local 802* (284 N. Y. 788, rev., 315 U. S. 769). Had the court found, as requested by the defendants, that the partnership was formed to avoid the establishment of a picket line with men walking up and down in front of the place, it would not have changed the result. (Cf. *Jenkins* v. *Moyse*, 254 N. Y. 319.) Accordingly, the action rests upon the principles of the common law without preliminary compli-
348 ance with the provisions of section 876-a of the Civil Practice Act required.

It has been found by the lower courts that the picketing of the World Cafeteria was at all times orderly and peaceful and that no acts of violence had been threatened or committed by the defendant union. The defendants had the constitutional right accurately and truthfully and without violence, force or coercion, or conduct other-

wise unlawful or oppressive to make their grievances known to the public. (*Wohl* v. *Bakery & Pastry Drivers & Helpers Local 802, supra.*) But a citizen is not required to tolerate peaceful picketing accompanied by untruthful representations, interference with his business or coercive conduct designed to injure or destroy his business whether a labor dispute exists or not. (*Busch Jewelry Co.* v. *United Retail Employees' Union*, 281 N. Y. 150; *Wohl* v. *Bakery & Pastry Drivers' & Helpers Local 802, supra.*) Unlike the record in the *Wohl* case, there are findings of fact here to sustain the decree. In this case it has been 350
found that individuals under the control of the defendants have been picketing the plaintiffs' cafeteria, bearing false and misleading signs that tend to create the impression that the plaintiffs are unfair to organized labor and that the pickets were previously employed by the plaintiffs, which representations were false and known by the defendants to be false, since there were no employees at the place of business of the plaintiffs and the plaintiffs were not unfair to organized labor; that such pickets approached prospective customers of the plaintiffs and told them that the plaintiffs' restaurant was giving bad food, and that by patronizing said restaurant they were aiding the cause of Fascism; and that the pickets 351
directed customers about to enter the plaintiffs' place of business to a cafeteria across the street which was a competitor of the plaintiffs. By no authoritative decision has it been held that such conduct is not subject to judicial restraint. On the contrary, unlawful and coercive conduct will be enjoined where it has been found that such

conduct has caused damage and will cause irreparable damage if permitted to continue and the party who is so damaged or threatened to be damaged has no adequate remedy at law. (*Busch Jewelry Co.* v. *United Retail Employees' Union, supra,* p. 156.)

No exceptions appear in the record which raise any other question of law open for our further consideration.

The judgment should be affirmed, with costs.

DESMOND, J. (dissenting). The judgment should be reversed and the complaint dismissed. The 353 issuance of an injunction in a case like this is positively forbidden by section 876-a of our Civil Practice Act, by the decisions of this court and by the decisions of the United States Supreme Court construing the free speech guaranty of the Constitution of the United States.

Plaintiff Loizides owned a restaurant. The other six plaintiffs were his employees. Defendant union tried to negotiate a collective bargaining agreement with owner Loizides. Loizides refused to negotiate. Beyond any doubt there was then and there a labor dispute. The union, believing—and surely not being without good reason for that belief—that it had a settled and 354 absolute right to advertise to the public the grievance it claimed to have, began to picket the restaurant. The "picket line" consisted of *just one picket.* The Trial Justice has specifically found that the one-man picketing "was at all times orderly and peaceful," that "no acts of violence have been threatened or committed by the defendant union," that "the picket on the

picket line * * * requested the public not to patronize said cafeteria since it was unfair to union labor, and made no other statements or representations." It the picketing described in those findings, herein quoted verbatim, is unlawful, then picketing has been absolutely and completely outlawed in this State.

Owner Loizides, for the express and admitted purpose of removing the one-man picket line from in front of his restaurant, called together his six employees and with them signed a document which made them all his partners. Having thus completely changed the aspect of his enterprise, 356
Loizides, with all his newly-minted partners joined as co-suitors, demanded of the court of equity that defendants be forthwith and forever enjoined from picketing the cafeteria. Section 876-a troubled Loizides not at all. He and his erstwhile workers, he explained to the court, were now co-equals and co-proprietors, and so, he argued, there could not be any "labor dispute" between the plaintiffs and the defendant union. Any "labor dispute" there might have been in the pre-partnership days, plaintiffs told the court, came to a full and final stop when the six employees, without leaving their posts or doffing their uniforms, assumed the roles of partners. Through such a 357
device and on such an argument has the owner of this restaurant secured an injunction which in so many words prohibits any picketing of any kind whatever. No such injunction can be countenanced by this court. To affirm that injunction we must hold that this is not "a case growing out of a labor dispute." (Civ. Pr. Act, § 876-a.) Such a holding is impossible. Whether we take the

allegations of the complaint, the admitted facts, the trial court's findings or any or all of them, the complaint must be dismissed.

True, there are no findings that the dispute which concededly existed before the picketing began on April fifteenth and concededly continued until the partnership agreement was signed, held over and continued after the partnership had sprung into being on April twenty-second. But Loizides himself testified that he adopted the partnership plan to stop the picketing. What finding was necessary after that frank admission?
359 There is no dispute of fact here. The injunction depends solely on an impossible construction of the law.

We are told that this action rests not on section 876-a, but on the principles of the common law. There is no point in reviewing the numerous decisions of this court in recent years denying the power to issue injunctions against peaceful, orderly picketing without threats or intimidation in *bona fide* labor disputes. Any common law of this State holding to the contrary must date back before *Exchange Bakery & Restaurant, Inc.* v. *Rifkin* (245 N. Y. 260), *Stillwell Theatre, Inc.* v. *Kaplan* (259 N. Y. 405) or *J. H. & S. Theatres, Inc.* v. *Fay* (260 N. Y. 315), all of which cases antedate
360 the enactment of section 876-a and all of which are positive in their affirmations of the right to picket peacefully.

Even if this injunction were not unlawful under section 876-a and under our decisions, early and late, even if there were no labor dispute and no case growing out of a labor dispute, this ban against peaceful picketing would still be violative

of the Federal Bill of Rights. Most plainly is this pointed out in *Bakery & Pastry Drivers & Helpers Local 802* v. *Wohl* (315 U. S. 769), where the Supreme Court noted (p. 774) that the New York courts had seemed to assume that the legality of the injunction followed from a determination that a labor dispute was not involved. "Of course," said the Supreme Court "that does not follow: one need not be in a 'labor dispute' as defined by state law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or 362
oppressive." (See, also, *Thornhill* v. *Alabama*, 310 U. S. 88, 100; *Milk Wagon Drivers Union* v. *Meadowmoor Dairies, Inc.*, 312 U. S. 287, 296-298; *American Federation of Labor* v. *Swing*, 312 U. S. 321.) Nothing is now better settled than that picketing is an exercise of the constitutional right of free speech, that it needs no authorization from the State, which may in proper case regulate picketing, but may never forbid it.

The Supreme Court decisions just cited make it unnecessary to deal extensively with *Thompson* v. *Boekhout* (273 N. Y. 390), wherein this court declared the absence of a labor dispute in a case where the owner of a small business decided to 363
run it without any employees at all. The constitutional question was not there raised. Incidentally, this court later made plain that the *Thompson* v. *Boekhout* ruling was to be limited to its special facts, for in *Boro Park S. L. P. Market, Inc.* v. *Heller* (280 N. Y. 481) this court decided that a labor dispute did exist with defendant union though all those employed in plaintiff's

business were stockholders of plaintiff corporation. Here Loizides did not discharge his employees and thereafter do all the work himself. He conferred a new status on their labors by drawing up a partnership agreement, which, while "valid" as the court held, was nevertheless a device (see *Matter of Scott* v. *Miller*, 285 N. Y. 760) to keep out the union while retaining the same services of the same workers as "partners."

We have not overlooked findings of fact numbered Fourth and Tenth. The first of these charges the picket with "bearing false and mis-
365 leading signs that tend to create the impression that the plaintiffs are unfair to organized labor, and also tend to create the impression in the eyes of the public that these pickets were previously employed by the plaintiffs." Actually the picketing signs said nothing about a strike or a previous employment; they simply announced (according to plaintiff Loizides): "This place is unfair to organized labor, please help us." Such statements cannot be enjoined. (*Wilner* v. *Bless*, 243 N. Y. 544; *Yann* v. *Raimist*, 255 N. Y. 307.) The Tenth finding is that the picket told prospective customers of the cafeteria that the cafeteria served bad food and that by patronizing it cus-
366 tomers "were aiding the cause of Fascism." But there is another finding (Twenty-third) above referred to, which states positively that the picket "requested the public not to patronize said cafeteria since it was unfair to union labor, and made no other statements or representations." The Tenth and Twenty-third findings are obviously irreconcilable and, applying as we must the settled rule that, where there are conflicting findings,

appellants get the benefit of the findings most favorable to them, we ignore the Tenth finding. Of course, even were that finding binding on us, the complaint would still have to be dismissed for non-compliance with section 876-a.

In this small lawsuit there is at hazard, just as surely as in great strifes that sweep the world, an ancient and inalienable right. If that right cannot find vindication in the courts, it has little chance elsewhere.

The judgment should be reversed, and the complaint dismissed, with costs.

368 FINCH, LEWIS and CONWAY, JJ., concur with RIPPEY, J., DESMOND, J., dissents in opinion in which LEHMAN, Ch. J., and LOUGHRAN, J., concur.

Judgment affirmed.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—June 14, 1943

On Petition for Writ of Certiorari to the Court of Appeals of the State of New York

369 A petition for rehearing having been filed in this case upon the denial of a petition for writ of certiorari;

Upon consideration thereof, it is ordered by this Court that the petition for rehearing be, and the same is hereby, granted.

It is further ordered that the order denying certiorari be, and the same is hereby, vacated; and that the petition for writ of certiorari herein be, and the same is hereby, granted.

It is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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*Omitted pursuant to stipulation (see page 100).

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—7680

Court of Appeals

OF THE STATE OF NEW YORK.

ELIAS TSAKIRES, KALLIS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARY YORWICK, JAMES LOIZIDES and LOUIS LOIZIDES, copartners trading under the name of THE COSMO CAFETERIA,
Plaintiffs-Respondents,

against

WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES UNION, LOCAL 302, an unincorporated association having more than seven members, individually and as President of said union,
Defendants-Appellants.

No. 3049
1939

Statement Under Rule 234.

This action was commenced by the service of the summons and complaint on defendants on May 3, 1939. Defendants joined issue by the service of an answer on May 16, 1939.

Plaintiffs appeared by David L. Delman. Defendants appeared by Boudin, Cohn & Glickstein.

The full names of the parties appear above. There has been no change of parties or of attorneys herein.

Notice of Appeal to Appellate Division.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

ELIAS TSAKIRES, KALLIS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARY YORWICK, JAMES LOIZIDES and LOUIS LOIZIDES, copartners trading under the name of THE COSMO CAFETERIA,

Plaintiffs,

against

WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES UNION, LOCAL 302, an unincorporated association having more than seven members, individually and as President of said union,

Defendants.

Sir:

PLEASE TAKE NOTICE that the defendants herein hereby appeal to the Appellate Division of the Supreme Court, First Department, from the final judgment herein, dated the 19th day of June, 1939, and entered in the office of the Clerk of the County of the Bronx on the 20th day of September, 1939, enjoining and restraining the defendants from picketing the plaintiffs' place of business, and that

this appeal is taken from the whole of said judgment and from each and every part thereof.

Dated: New York, September 21, 1939.

Yours, etc.,

BOUDIN, COHN & GLICKSTEIN,
Attorneys for Defendants,
Office & Post Office Address,
20 West 43rd Street,
Borough of Manhattan,
City of New York.

8

To:

DAVID L. DELMAN, Esq.,
Attorney for Plaintiffs,
261 Broadway,
New York City.

9

10 **Summons.**

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

ELIAS TSAKIRES, KALLIS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARY YORWICK, JAMES LOIZIDES and LOUIS LOIZIDES, copartners trading under the name of THE COSMO-CAFETERIA,

Plaintiffs,

against

11 WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES UNION, LOCAL 302, an unincorporated association having more than seven members, individually and as President of said union,

Defendants.

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or
12 answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, New York, May 3, 1939.

DAVID L. DELMAN,
Attorney for Plaintiffs,
Office and Post Office Address,
261 Broadway,
Borough of Manhattan,
New York City.

13

Complaint.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

[SAME TITLE.]

Plaintiffs, complaining of the defendants, by David L. Dehman, their attorney, respectfully allege:

FIRST: That the defendant Cafeteria Employees Union, Local 302, is a voluntary unincorporated association of more than seven members, and the defendant William Mesevich is its President. 14

SECOND: That the plaintiffs are partners and owners of the cafeteria known as The Cosmo Cafeteria, located at 726 East Fremont Avenue, Borough of Bronx, City of New York.

THIRD: That individuals under the control of the defendants have been picketing said plaintiffs' cafeteria, bearing false and misleading signs that tend to create the impression that the plaintiffs are unfair to organized labor, and also tend to create the impression in the eyes of the public 15 that those pickets were previously employed by the plaintiffs.

FOURTH: That those signs carried by the pickets are untrue and known to the defendants to be untrue, because there are no employees at the place of business of the plaintiffs and the plaintiffs are not unfair to organized labor.

FIFTH: That there is no "labor dispute" between the plaintiffs and any employees, and no employee of the plaintiffs has ceased working because of any dispute as to the rate of wages or any other acts of the plaintiffs.

SIXTH: That the plaintiffs are the sole owners of The Cosmo Cafeteria and do all the work in connection with said cafeteria without any outside assistance.

SEVENTH: That no strike has ever been called at the plaintiffs' place of business.

17

EIGHTH: That the plaintiffs, as a result of the unlawful practices of the defendants, have suffered, suffer and will suffer irreparable damage, and they may find their business ruined without any adequate remedy at law, and must, therefore, seek this equitable relief in order to prevent the defendants from continuing their unlawful practices.

WHEREFORE, plaintiffs demand judgment against the defendants:

(a) That the defendants and their agents, servants and employees and those acting under their direction or control, be enjoined
18 permanently and during the pendency of this action from stationing any pickets at or near the plaintiffs' place of business as above described, and from interfering with the plaintiffs' customers who may seek to enter the plaintiffs' place of business or prevent by coercion or in any wise, any customers of the plaintiffs seeking to enter plaintiffs' place of business, or from interfering in any wise with the plaintiffs' business.

(b) That the defendants pay to the plaintiffs such damages as shall be proven at the trial or as to this Court may seem fair and adequate.

(c) That the plaintiffs have such other and further and different relief as to the Court may seem proper, together with the costs and disbursements of this action.

DAVID L. DEEMAN,
Attorney for Plaintiffs,
Office & P. O. Address,
261 Broadway, 20
Borough of Manhattan,
New York City.

(Verified May 3, 1939.)

Answer.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

[SAME TITLE.] 21

The defendant William Mesevich, answering the complaint of the plaintiffs herein, by his attorneys, Boudin, Cohn & Glickstein, respectfully shows to this Honorable Court and alleges:

1. He denies each and every allegation contained in the paragraph or section of the said complaint marked or numbered "Second."

II. He denies each and every allegation contained in the paragraph or section of the said complaint marked or numbered "Third," except that he admits that the defendant union has been peacefully and lawfully picketing the cafeteria known as the Cosmo Cafeteria.

III. He denies each and every allegation contained in the paragraphs or sections of the said complaint marked or numbered "Fourth," "Fifth," "Sixth," and "Eighth."

FURTHER ANSWERING THE SAID COMPLAINT, AND AS
23 A FIRST SEPARATE AND COMPLETE DEFENSE THERETO, THE DEFENDANT ALLEGES:

IV. That the enterprise conducted and carried on under the name of Cosmo Cafeteria is the result of an arrangement, scheme, plan, design, and conspiracy on the part of the plaintiffs, and particularly on the part of the plaintiffs James Loizides and Louis Loizides to circumvent the laws of the State of New York by creating a fictitious partnership for the purpose of representing that they employ no help and thereby to gain immunity from the statutes of the State of New York with respect to labor and social legislation, and further, to avoid an employer's financial
24 responsibility as required by the laws of the State of New York, particularly those laws dealings with labor, workmen's compensation and unemployment insurance.

V. That the plaintiffs herein are not actually copartners but that the enterprise known as the Cosmo Cafeteria is owned, operated and controlled by the plaintiffs James Loizides and Louis Loizides.

VI. That by reason thereof, the plaintiffs have and are attempting to perpetrate a fraud, and

have come into a court of equity with unclean hands and are consequently entitled to no relief.

FURTHER ANSWERING THE SAID COMPLAINT, AND AS A SECOND, SEPARATE AND COMPLETE DEFENSE THERETO, THE DEFENDANT ALLEGES:

VII. That an actual controversy and labor dispute exists between the plaintiffs James Loizides and Louis Loizides and the defendant union, and that such controversy and labor dispute is concerned with, among other things, the question of social and economic conditions in the restaurant industry in the City of New York, including 26
standards of employment and working conditions.

VIII. That as the result of a concealed relationship of employer and employee existing between and among the plaintiffs, and as a result of the failure on the part of the plaintiffs James Loizides and Louis Loizides to comply with the statutes of the State of New York with respect to employment of labor, and as a result of the fraudulent plans scheme and design of the plaintiffs, said plaintiffs are enabled to unfairly compete with enterprises of a similar kind and nature and to undermine conditions of labor regulated by the statutes of the State of New York and social and economic conditions and to thereby create chaos 27
and unemployment in the restaurant industry.

FURTHER ANSWERING THE SAID COMPLAINT, AND AS A THIRD, SEPARATE AND COMPLETE DEFENSE THERETO, THE DEFENDANT ALLEGES:

IX. That the dispute between the plaintiffs and the defendant is concerned with terms and conditions of employment and concerns the association

or representation of persons in fixing, negotiating, maintaining, changing, or scheming to arrange terms or conditions of employment and concerns employment relations.

X. That by reason thereof the within action involves a labor dispute within Section 876-a of the Civil Practice Act.

XI. That the complaint herein fails to comply with said Section 876-a of the Civil Practice Act and by reason thereof is insufficient and should be dismissed.

29

FURTHER ANSWERING THE SAID COMPLAINT, AND AS A FOURTH, SEPARATE AND COMPLETE DEFENSE THERETO, SAID DEFENDANT ALLEGES:

XII. That the plaintiffs herein have not sought or in fact negotiated for the settlement of the labor dispute herein in good faith and have made no bona fide efforts to effect such settlement, and in fact have not made every reasonable effort to settle the dispute either by negotiation or with the aid of any machinery or mediation provided for by law.

WHEREFORE, said defendant demands judgment
30 herein dismissing the complaint, together with the costs and disbursements of this action.

BOUDIN, COHN & GLICKSTEIN,
Attorneys for Defendant William Mesevich,
Office & P. O. Address
20 West 43rd Street,
Borough of Manhattan,
City of New York.

(Verified May 16, 1939.)

31

Plaintiffs' Proposed Findings.

SUPREME COURT

OF THE STATE OF NEW YORK.

COUNTY OF BRONX.

[SAME TITLE.]

The above entitled action having duly come on to be heard before me at a Special Term for Trials of this Court, held in and for the County of the Bronx, on the 21st day of June, 1939, and the plaintiffs having appeared by David L. Delman, Esq., 32
their attorney, and the defendants having appeared by Boudin, Cohn & Glickstein, Esqs. (L. B. Boudin, of counsel) and the evidence of both sides having been adduced, and due deliberation having been had thereon, and after hearing David L. Delman, Esq., attorney for the plaintiffs, and Boudin, Cohn & Glickstein, Esqs., attorneys for the defendants, I do hereby find and decide as follows:

FINDINGS OF FACT.

FIRST: That the defendant Cafeteria Employees Union, Local 302, is a voluntary unincorporated association of more than seven members, and the defendant William Mesevich is its President. 33

Found—T. A. L., J. S. C.

SECOND: That the plaintiffs are partners and owners of the cafeteria known as The Cosmo Cafeteria, located at 726 East Tremont Avenue, Borough of Bronx, City of New York.

Found—T. A. L., J. S. C.

34 *Plaintiffs' Proposed Findings.*

THIRD: That the partnership formed by the plaintiffs is a valid partnership.

Found—T. A. L., J. S. C.

FOURTH: That individuals under the control of the defendants have been picketing said plaintiffs' cafeteria, bearing false and misleading signs that tend to create the impression that the plaintiffs are unfair to organized labor, and also tend to create the impression in the eyes of the public that these pickets were previously employed by the plaintiffs. Said picketing began on or about
35 April 14, 1939.

Found—T. A. L., J. S. C.

FIFTH: That those signs carried by the pickets are untrue and known to the defendants to be untrue, because there are no employees at the place of business of the plaintiffs and the plaintiffs are not unfair to organized labor.

Found—T. A. L., J. S. C.

SIXTH: That there is no "labor dispute" between the plaintiffs and any employees, or between the plaintiffs and the defendants, within the purview of Section 876-a of the Civil Practice Act, and
36 no employee of the plaintiffs has ceased working because of any dispute as to the rate of wages or any other acts of the plaintiffs.

Found—T. A. L., J. S. C.

SEVENTH: That the plaintiffs are the sole owners of The Cosmo Cafeteria and do all the work in connection with said cafeteria without any outside assistance.

Found—T. A. L., J. S. C.

EIGHTH: That no strike has ever been called at the plaintiffs' place of business.

Found—T. A. L., J. S. C.

NINTH: That the plaintiffs, as a result of the unlawful practices of the defendants, and the individuals under their control, have suffered damage, and unless the defendants are restrained from continuing their unlawful practices, the plaintiffs would suffer irreparable damage and may find their business ruined without any adequate remedy at law.

Found—T. A. L., J. S. C.

TENTH: That the pickets in front of plaintiffs' place of business approached prospective customers of the plaintiffs and told them that the plaintiffs' restaurant was giving bad food, and that there was a strike in the plaintiffs' restaurant. That said pickets insulted customers of the plaintiffs, who were about to enter the said restaurant of the plaintiffs.

Found—T. A. L., J. S. C.

ELEVENTH: That the said pickets directed customers about to enter the plaintiffs' place of business to other restaurants.

Found—T. A. L., J. S. C.

TWELFTH: That the partnership herein was formed on or about April 22, 1939, and all the plaintiffs signed the partnership agreement.

Found—T. A. L., J. S. C.

THIRTEENTH: That a certificate doing business as The Cosmo Cafeteria was duly filed by the plaintiffs in the office of the County Clerk of the County of Bronx.

Found—T. A. L., J. S. C.

CONCLUSIONS OF LAW.

1. That the plaintiffs are entitled to a permanent injunction, restraining and enjoining the defendants and their agents, servants and employees and those acting under their direction or control, from stationing any pickets at or near the plaintiffs' place of business at 726 East Tremont Avenue, Borough of the Bronx, City of New York, and from interfering with the plaintiffs' customers who may seek to enter their place of business, or to prevent by coercion or otherwise any customers of the plaintiffs seeking to enter plaintiffs' place of business, and from interfering in any other wise with the plaintiffs' business.

Found—T. A. L., J. S. C.

2. That the plaintiffs are entitled to the costs and legal disbursements of this action.

Refused—T. A. L., J. S. C.

3. Let a judgment be entered accordingly.

Found—T. A. L., J. S. C.

Dated, New York, June , 1939.

J. S. C.

43

Defendants' Proposed Findings.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

[SAME TITLE.]

The above entitled action having duly come on to be heard before me at a Special Term for Trials of this Court, held in and for the County of the Bronx, on the 21st day of June, 1939, and the plaintiffs having appeared by David L. Delman, Esq., 44
their attorney, and the defendant having appeared by Boudin, Cohn & Glickstein, Esqs., his attorneys, Louis B. Boudin and Irving R. Feinberg, of counsel, and the evidence of both sides having been adduced, and due deliberation having been had thereon, I do hereby find as follows:

FINDINGS OF FACT.

1. That the defendant Cafeteria Employees Union, Local 302, is a voluntary unincorporated association, consisting of a labor union and is affiliated with the American Federation of Labor, and the defendant William Mesevich is the president thereof. 45

Found—T. A. L., J. S. C.

2. That the Cafeteria Employees Union, Local 302, is composed of and has jurisdiction over men and women employed in the cafeteria industry in the City of New York.

Found—T. A. L., J. S. C.

46 *Defendant's Proposed Findings.*

3. That approximately three years ago, the plaintiff Louis Loizides opened a cafeteria at No. 726 East Tremont Avenue, in the Borough of Bronx, City of New York, and personally conducted and owned said cafeteria from said time until April 22, 1939.

Found—T. A. L., J. S. C.

4. That upon the opening of said cafeteria approximately three years ago, plaintiff Louis Loizides took an eight-year lease for said premises in his own name; that the lease for said premises still
47 continues in the name of said Louis Loizides and has not been assigned to any other person.

Refused—T. A. L., J. S. C.

5. That during said period, from approximately three years ago to April 22, 1939, said cafeteria was owned and operated by Louis Loizides under the trade name of The Cosmo Cafeteria.

Found—T. A. L., J. S. C.

6. That the plaintiffs herein have been employed in said The Cosmo Cafeteria for various periods prior to April 22, 1939, which periods vary from three weeks to three years; and that some of
48 the plaintiffs herein were employed by said Louis Loizides continuously from the date of the opening of said cafeteria.

Refused—T. A. L., J. S. C.

7. That prior to April 14, 1939, plaintiff Louis Loizides was approached by a representative of the Cafeteria Employees Union, Local 302, and requested to employ union help; that said Louis

Loizides refused to discuss the question of employing union help with the representative of the union and refused to deal or negotiate with the union and thereby a dispute arose between the plaintiff Louis Loizides and the defendant union.

Refused—T. A. L., J. S. C.

8. That by reason of said dispute and on or about the 14th day of April, 1939, a picket line was established by the Cafeteria Employees Union, Local 302, in front of The Cosmo Cafeteria; and that said system of picketing consisted of one person walking to and fro in front of said cafe- 50
teria.

Found—T. A. L., J. S. C.

9. That at no time did more than one person picket in front of The Cosmo Cafeteria.

Found—T. A. L., J. S. C.

10. That the picketing of The Cosmo Cafeteria was at all times orderly and peaceful.

Found—T. A. L., J. S. C.

11. That no acts of violence have been threatened or committed by the defendant union. 51

Found—T. A. L., J. S. C.

12. That the plaintiffs performed various duties in said cafeteria, including the duties of countermen, chefs, kitchenmen, dishwashers, busboys, waiters, waitresses, etc., during the periods of their employment prior to April 22, 1939, and continued to perform the same duties after said date and until the date of trial.

Refused—T. A. L., J. S. C.

52 *Defendant's Proposed Findings.*

13. That on or about the 22nd day of April, 1939, the plaintiff Louis Loizides and the remaining plaintiffs herein, being the employees in The Cosmo Cafeteria, signed a paper writing purporting to be a partnership agreement; that the arrangement so formed was a fictitious arrangement.

Refused—T. A. L., J. S. C.

14. That none of the plaintiffs herein were or are of sufficient financial ability to pay for their alleged share in said partnership and have no reasonable expectation of being able to do so within
53 or at the expiration of one year thereafter.

Refused—T. A. L., J. S. C.

15. That said arrangement among the plaintiffs was the result of a conspiracy on the part of the plaintiff Louis Loizides to circumvent the laws of the State of New York for the purpose of representing that he employs no help, and thereby to gain immunity from the laws of the State of New York with respect to labor unions, social legislation, workmen's compensation and unemployment insurance.

Refused—T. A. L., J. S. C.

54 16. That the plaintiffs are not actually copartners; that the relationship of employer and employee exists among the plaintiffs.

Refused—T. A. L., J. S. C.

17. That the said arrangement among the plaintiffs was entered into for the purpose of avoiding unionization of The Cosmo Cafeteria.

Refused—T. A. L., J. S. C.

18. The said arrangement among the plaintiffs was entered into for the purpose of applying to this Court for an injunction restraining the defendant union from picketing The Cosmo Cafeteria.

Refused—T. A. L., J. S. C.

19. That the plaintiffs herein, with the exception of the plaintiff Louis Loizides, have obtained no permit from the Board of Health of the City of New York, permitting them to conduct and operate a restaurant or cafeteria, but that the only permit obtained from the Board of Health 56
was that obtained by the plaintiff Louis Loizides prior to April 14, 1939, and that said permit has not been assigned by the plaintiff Louis Loizides to the other plaintiffs.

Refused—T. A. L., J. S. C.

20. That all of the fixtures and property of The Cosmo Cafeteria are owned by and remain in the name of the plaintiff Louis Loizides; that the title to these fixtures has not passed to the remaining plaintiffs.

Refused—T. A. L., J. S. C.

21. That the plaintiff James Loizides is the 57
brother of the plaintiff Louis Loizides.

Refused—T. A. L., J. S. C.

22. That upon the execution of said arrangement no money was invested in the business of The Cosmo Cafeteria by any of the plaintiffs, and that the only money or property invested in said business was that originally invested by the plain-

tiff Louis Loizides on the opening of said cafeteria three years ago.

Refused—T. A. L., J. S. C.

23. That upon the execution of said arrangement, no money was paid by any of the remaining plaintiffs herein to the plaintiff Louis Loizides, by reason thereof, nor has any money been paid since.

Refused—T. A. L., J. S. C.

24. That after the execution of said arrangement, the plaintiffs herein continued to perform
59 the same functions and duties in The Cosmo Cafeteria which they had previously performed.

Refused—T. A. L., J. S. C.

25. That after the execution of said arrangement, the plaintiffs continued to receive weekly from The Cosmo Cafeteria the same sums of money which they had received weekly prior to April 22, 1939.

Refused—T. A. L., J. S. C.

26. That no new bank account was opened by The Cosmo Cafeteria until June 19, 1939, on which date the old bank account, standing in the name of
60 Louis Loizides, was transferred to the name of The Cosmo Cafeteria.

Refused—T. A. L., J. S. C.

27. That the plaintiffs herein carry no workmen's compensation insurance.

Found—T. A. L., J. S. C.

Defendant's Proposed Findings. 61

28. That the plaintiffs herein pay no social security taxes.

Found—T. A. L., J. S. C.

29. That the plaintiffs herein pay no unemployment insurance taxes.

Found—T. A. L., J. S. C.

30. That the public officers charged with the duty to protect the property of the plaintiffs and of The Cosmo Cafeteria have been able to furnish adequate protection to said property. 62

Refused—T. A. L., J. S. C.

31. That the picket on the picket line in front of The Cosmo Cafeteria has been instructed by the defendant union not to address or to accost any member of the public or any patron of The Cosmo Cafeteria, but merely to walk to and fro without making any oral statements.

Found—T. A. L., J. S. C.

32. The plaintiffs herein have refused to discuss this dispute with the defendant union and have refused to discuss with the union the maintenance of union conditions of employment in The Cosmo Cafeteria. 63

Refused—T. A. L., J. S. C.

33. That the plaintiffs have made no reasonable efforts to settle the dispute with the defendant either by negotiation or with the aid of the machinery of mediation and voluntary arbitration provided for by law.

Refused—T. A. L., J. S. C.

64 *Defendant's Proposed Findings.*

34. That no unlawful acts or any breach of a contract, not contrary to public policy, have been threatened or committed, and no such acts or breach will be executed if not restrained.

Refused—T. A. L., J. S. C.

35. That no substantial and irreparable injury to the plaintiffs' property will follow if the relief requested is not granted.

Refused—T. A. L., J. S. C.

36. That the dispute herein concerns terms and
65 conditions of employment and concerns employment relations.

Refused—T. A. L., J. S. C.

37. That the dispute herein arises out of the respective interests of employer and employee.

Refused—T. A. L., J. S. C.

38. That the plaintiffs herein are attempting to circumvent the provisions of the laws of the State of New York and specifically those laws relating to labor disputes.

Refused—T. A. L., J. S. C.

66

CONCLUSIONS OF LAW.

1. That the dispute between the plaintiffs and the defendant is a labor dispute within the meaning of Section 876-a of the Civil Practice Act.

Refused—T. A. L., J. S. C.

2. That the picketing conducted by the defendant union is lawful as an incident of a labor di-

pute between the plaintiffs and the defendant, and is carried on for the purpose of raising labor standards in the cafeteria industry and in the City of New York, and of installing in the place of business conducted by the plaintiff Louis Loizides union standards and conditions of work.

Refused—T. A. L., J. S. C.

3. That the defendant is entitled to an order dismissing the complaint herein with costs.

Refused—T. A. L., J. S. C.

4. I hereby direct that judgment be entered 68
accordingly.

Refused—T. A. L., J. S. C.

Dated, New York, June , 1939.

Justice of the Supreme Court
of the State of New York.

Decision.

SUPREME COURT 69

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

[SAME TITLE.]

The above entitled action having duly come on to be heard before me at a Special Term for Trials of this Court, held in and for the County of the

Bronx on the 21st day of June, 1939, and the plaintiffs having appeared by David L. Delman, Esq., their attorney, and the defendants having appeared by Boudin, Cohn & Glickstein, Esqs. (L. B. Boudin, of counsel) and the evidence of both sides having been adduced, and due deliberation having been had thereon, and after hearing David L. Delman, Esq., attorney for the plaintiffs, and Boudin, Cohn & Glickstein, Esqs., attorneys for the defendants, I do hereby find and decide as follows:

FINDINGS OF FACT.

FIRST: That the defendant Cafeteria Employees Union, Local 302, is a voluntary unincorporated association of more than seven members, and the defendant William Mesevich is its President.

SECOND: That the plaintiffs are partners and owners of the cafeteria known as The Cosmo Cafeteria, located at 726 East Tremont Avenue, Borough of Bronx, City of New York.

THIRD: That the partnership formed by the plaintiffs is a valid partnership.

FOURTH: That individuals under the control of the defendants have been picketing said plaintiffs' cafeteria, bearing false and misleading signs that tend to create the impression that the plaintiffs are unfair to organized labor, and also tend to create the impression in the eyes of the public that these pickets were previously employed by the plaintiffs. Said picketing began on or about April 14, 1939.

FIFTH: That those signs carried by the picket are untrue and known to the defendants to be un-

true, because there are no employees at the place of business of the plaintiffs and the plaintiffs are not unfair to organized labor.

SIXTH: That there is no "labor dispute" between the plaintiffs and any employees, or between the plaintiffs and the defendants, within the purview of Section 876-a of the Civil Practice Act, and no employee of the plaintiffs has ceased working because of any dispute as to the rate of wages or any other acts of the plaintiffs.

SEVENTH: That the plaintiffs are the sole owners of The Cosmo Cafeteria and do all the work 74
in connection with said cafeteria without any outside assistance.

EIGHTH: That no strike has ever been called at the plaintiffs' place of business.

NINTH: That the plaintiffs, as a result of the unlawful practices of the defendants, and the individuals under their control, have suffered damage, and unless the defendants are restrained from continuing their unlawful practices, the plaintiffs would suffer irreparable damage and may find their business ruined without any adequate remedy at law. 75

TENTH: That the pickets in front of plaintiffs' place of business approached prospective customers of the plaintiffs and told them that the plaintiffs' restaurant was giving bad food, and that there was a strike in the plaintiffs' restaurant. That said pickets insulted customers of the plaintiffs, who were about to enter the said restaurant of the plaintiffs

ELEVENTH: That the said pickets directed customers about to enter the plaintiffs' place of business to other restaurants.

TWELFTH: That the partnership herein was formed on or about April 22, 1939, and all the plaintiffs signed the partnership agreement.

THIRTEENTH: That a certificate doing business as The Cosmo Cafeteria was duly filed by the plaintiffs in the office of the County Clerk of the County of Bronx.

77 FOURTEENTH: That the defendant Cafeteria Employees Union, Local 302, is a voluntary unincorporated association, consisting of a labor union and is affiliated with the American Federation of Labor, and the defendant William Mesevich is the president thereof.

FIFTEENTH: That the Cafeteria Employees Union, Local 302, is composed of and has jurisdiction over men and women employed in the cafeteria industry in the City of New York.

SIXTEENTH: That approximately three years ago, the plaintiff Louis Loizides opened a cafeteria at No. 726 East Tremont Avenue, in the
78 Borough of Bronx, City of New York, and personally conducted and owned said cafeteria from said time until April 22, 1939.

SEVENTEENTH: That during said period, from approximately three years ago to April 22, 1939, said cafeteria was owned and operated by Louis Loizides under the trade name of The Cosmo Cafeteria.

EIGHTEENTH: That by reason of said dispute and on or about the 14th day of April, 1939, a picket line was established by the Cafeteria Employees Union, Local 302, in front of The Cosmo Cafeteria; and that said system of picketing consisted of one person walking to and fro in front of said cafeteria.

NINETEENTH: That at no time did more than one person picket in front of The Cosmo Cafeteria.

TWENTIETH: That the picketing of The Cosmo Cafeteria was at all times orderly and peaceful. 80

TWENTY-FIRST: That no acts of violence have been threatened or committed by the defendant union.

TWENTY-SECOND: That the plaintiffs herein carry no workmen's compensation insurance.

TWENTY-THIRD: That the plaintiffs herein pay no social security taxes.

TWENTY-FOURTH: That the plaintiffs herein pay no unemployment insurance taxes.

TWENTY-FIFTH: That the picket on the picket line in front of The Cosmo Cafeteria has been instructed by the defendant union not to address or to accost any member of the public or any patron of The Cosmo Cafeteria, but merely to walk to and fro without making any oral statements. 81

CONCLUSIONS OF LAW.

1. That the plaintiffs are entitled to a permanent injunction, restraining and enjoining the defendants and their agents, servants and em-

ployees and those acting under their direction or control, from stationing any pickets at or near the plaintiffs' place of business at 726 East Tremont Avenue, Borough of the Bronx, City of New York, and from interfering with the plaintiffs' customers who may seek to enter their place of business, or to prevent by coercion or otherwise any customers of the plaintiffs seeking to enter plaintiffs' place of business, and from interfering in any other wise with the plaintiffs' business.

2. Let a judgment be entered accordingly.

83 Dated, New York, July 19, 1939.

T. A. L.,
Justice of the Supreme Court,
State of New York.

Judgment Appealed From.

At a Special Term, Part I, of the Supreme Court of the State of New York, County of the Bronx, at the Bronx County Building, 161st Street and Grand Concourse, in the Borough of the Bronx, City of New York, on the 19 day of June, 1939.

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Present: Hon. Timothy A. Leary, *Justice.*

[Same Title.]

The above entitled action having been brought by the plaintiffs for a permanent injunction

against the defendants and the individuals under their control, restraining and enjoining them from stationing pickets at or near the plaintiffs' place of business at 726 East Tremont Avenue, Borough of the Bronx, City of New York, and from interfering with the plaintiffs' customers who may seek to enter their place of business, or to prevent by coercion or otherwise any customers of the plaintiffs seeking to enter plaintiffs' place of business, and from interfering in any other wise with the plaintiffs' business, and issues of law and fact having been tried before me on the 21st day of June, 1939, and evidence having been adduced by both parties,

Now, on application of David L. Delman, attorney for the plaintiffs, it is

ORDERED, ADJUDGED AND DECREED, that the plaintiffs have judgment against the defendants for a permanent injunction restraining them, and the defendants hereby are restrained and enjoined from stationing pickets at or near the plaintiffs' place of business at 726 East Tremont Avenue, Borough of the Bronx, City of New York, and from interfering with the plaintiffs' customers who may seek to enter their place of business, or to prevent by coercion or otherwise any customers of the plaintiffs seeking to enter plaintiffs' place of business, and from interfering in any other wise with the plaintiffs' business.

Enter,

T. A. L.,
J. S. C.

MICHAEL McHUGH,
Clerk.

September 20, 1939.

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Case and Exceptions.

SUPREME COURT,

BRONX COUNTY.

SPECIAL TERM, PART I.

[SAME TITLE.]

June 21, 1939.

Before: HON. TIMOTHY A. LEARY, *Justice*.

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APPEARANCES:

DAVID L. DELMAN, Esq., for the plaintiffs.

BOUDIN, COHN & GLICKSTEIN, Esqs., for the defendant, by LOUIS B. BOUDIN, Esq., and IRVING R. FEINBERG, Esq., of counsel.

LOUIS LOIZIDES, of 3104 Crotona Parkway, Bronx, New York City, one of the plaintiffs, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

90

Direct examination by Mr. Delman.

Q. Mr. Loizides, you are one of the plaintiffs in this case? A. Yes.

Q. Were you formerly the owner of the Cosmo Cafeteria at 726 East Tremont Avenue? A. Yes.

Q. On April 22, 1939, was this agreement signed between the other planitiffs and you (showing paper)? A. Yes, sir.

Mr. Delman: I offer that in evidence.

Mr. Boudin: That is objected to as irrelevant, immaterial and incompetent.

The Court: Objection sustained; mark it for identification.

(The paper was marked Plaintiffs' Exhibit 1 for Identification.)

Mr. Delman: I now offer in evidence certificate of doing business of the Cosmo Cafeteria, signed by these plaintiffs and filed with the Clerk of Bronx County on April 22, 1939. 92

Mr. Boudin: I object to that as incompetent, irrelevant and immaterial.

(Objection overruled; defendant excepts.)

(The certified copy certificate was received in evidence and marked Plaintiffs' Exhibit 2.)

Q. Prior to the signing and filing of Plaintiffs' Exhibit No. 2 already in evidence, did the employees and you at that time have a meeting? A. Yes, sir.

Q. And that was filed pursuant to that meeting A. Yes.

Q. Was it after that meeting that this agreement, Plaintiffs' Exhibit No. 1 for Identification, was signed by all the employees and you? A. Yes. 93

Mr. Delman: I renew my offer of the agreement of co-partnership in evidence.

Mr. Boudin: Same objection.

(Objection overruled; defendant excepts.)

(The paper marked Plaintiffs' Exhibit 1 for Identification was received in evidence.)

Q. Before this Plaintiffs' Exhibit No. 1 in evidence, and Plaintiffs' Exhibit No. 2 in evidence,

were signed, did you ever have any union employees? A. No.

Q. Was there ever a strike called in your place? A. No.

Mr. Boudin: I object to that as incompetent, irrelevant and immaterial.

(Objection overruled; defendant excepts.)

Q. Before these Plaintiffs' Exhibits 1 and 2 were signed was anyone from the union, Local 302 of the Cafeteria Workers Union, or anyone, to see you? A. No.

95

Cross-examination by Mr. Boudin.

Q. Mr. Loizides, before these two papers were signed, this alleged partnership agreement and the original certificate, was there a picket line, or any picketing in front of this store which you own, which is known as the Cosmo Cafeteria?

Mr. Delman: Objected to on the ground it is immaterial and incompetent.

(Objection overruled.)

A. Before the papers were signed there was picketing there.

96 Q. How long before this agreement marked Plaintiffs' Exhibit No. 1 was signed, had this picketing been going on in front of the Cosmo Cafeteria? A. About eight or ten days.

Q. There were nine people that signed this paper, which is Plaintiffs' Exhibit No. 1? A. Yes, sir.

Mr. Delman: Objected to; the paper speaks for itself.

(Objection sustained.)

Q. How many of these eight people who besides yourself signed Plaintiffs' Exhibit No. 1 had been in your employ at the time the picketing began? A. How many were in my employ before it was signed?

Q. Yes. A. All of them.

Q. All of them were in your employ? A. Yes.

Q. How long had they all been in your employ before this alleged partnership agreement was signed? A. Some of them have been there ever since I opened up the place.

Q. Well, how long is that? A. Almost three years. 98

Q. You mean you were the owner of this Cosmo Cafeteria for three years prior to the signing of either of these papers? A. Yes; I was the owner, and still the owner.

Q. You are still the owner; I want to make sure. You were three years the owner of the cafeteria before the papers were signed? A. Almost three years.

Q. You are still the owner of it? A. I am one of them to-day.

Q. You said a minute ago you are still the owner? A. One of them.

Q. You are one of the owners; when you started in that business called the Cosmo Cafeteria you were the only owner? A. When? 99

Q. When you opened that business? A. Yes.

Q. You were the only owner? A. That is right.

Q. How long did you continue as the only owner?

Mr. Delman: Objected to as answered already. He said April 22, 1939.

The Court: Objection overruled.

Mr. Boudin: If counsel will answer it, I will accept counsel's statement. If counsel

states that the man continued as the only owner ever since the opening three years ago until April 29, 1939——

Mr. Delman: That is correct—April 22, 1939.

Q. How long was Mr. Tsakires in your employ before April 22, 1939?

Mr. Delman: Objected to as immaterial. (Objection overruled.)

A. Mr. Tsakires worked for me, I think, some
101 time last summer, and he came back just about a month before we signed this partnership.

Q. You mean last summer was the first time he was employed by you? A. That is right.

Q. How about Constantine? A. There are two of them.

Q. Kallis Constantine. A. Constantine is more than a year.

Q. How much more?

The Court: That is long enough: we are not going behind that.

Q. How about Lymbouris, how long had he been
102 employed— A. From the first day I opened the place.

Q. That is about three years ago; how about Angelo Constantine? A. More than a year.

Q. How about Nicholas Russo? A. Nicholas Russo about—more than a year.

Q. How much more? A. Exactly I cannot tell.

Q. How about Stella Bellas? A. She worked for me a few weeks before we signed the contract.

Q. How many weeks before? A. Two or three weeks before.

Q. How about Mary Yorwick? A. What is the name?

Q. Mary Yorwick. A. About two months before I signed the contract.

Q. How about James Loizides? A. Ever since I opened the place.

Q. What? A. From the first day I opened the place.

Q. What functions or what work was each one of these people doing before this agreement was signed? A. What kind of work? 104

Q. Yes. A. What kind of work they were doing?

Q. That is right. A. Well, some of them, they were—one of them is a cook, another is a counterman, another is a dishwasher, and waitress, and counter, and cleaning, everything.

Q. Are they doing the same work now they had been doing before this paper was signed? A. They are doing everything that is necessary for the business.

Q. I asked you are they doing substantially the same work now they were doing before? A. About the same.

Q. Who is the counterman? A. More than one.

Q. How many countermen did you have? A. Well, four countermen. 105

Q. Are they still the countermen there now? A. Yes, they are doing counter work and they are doing cleaning work, they are doing——

Q. Were they doing cleaning work before? A. Yes.

Q. In other words, they are doing the same thing now they were doing before: the signing of this agreement did not make any difference or

106 *Louis Loizides—For Plaintiffs—Cross.*

change in the kind of work they are doing? A. No, but it is necessary——

Q. All I asked you, is there actually any change in the kind of work they were performing since the signing of the agreement? A. There is little change in counter work now.

Q. No, will you please answer the question. Is there or is there not, and if so, what is it? A. Well, there is some change.

Q. What is the change? A. I will tell you. Now they are partners, they are willing to do anything——

107 Mr. Boudin: I move to strike out "now they are willing."

Q. Let us take the cook, for instance, who is the cook? A. James Loizides.

Q. He was cooking all the time before? A. Yes.

Q. Is he still the cook? A. He is a cook, he is a salad man, he is doing counter work.

Q. Was he a salad man also before? A. No.

Q. No; you changed him from cook to salad man since? A. No, I did not change him; he was willing to do that.

Q. What? A. I did not change him myself.

Q. Who changed him? A. By himself.

108 Q. He changed it by himself; he said, "Now, boss, I have been cook until now. Now I will be salad man." Is that what you mean to tell this Court? A. I don't want to tell this Court, but that is what he is doing now.

Q. What is he doing now? A. Doing chef work, salad man's work, counterman's work; anything that is necessary for him to do.

Q. Was he doing anything besides the chef's work before this paper was signed? A. Yes; short orders.

Q. In other words, he did at that time what was required to be done, and he does the same thing now, isn't that the fact? A. Yes.

Q. When you opened this place of business you obtained a lease, I take it? A. A lease?

Q. Yes. A. Yes.

Q. For how long? A. Eight years.

Q. In your own name? A. Yes.

Q. The lease is still the same? A. Yes.

Q. And it is still in your own name? A. Yes. 110

Q. And when you opened this cafeteria you gave it the name by which it became known, is that correct? A. That is right.

Q. What was the name you adopted for it? A. Cosmo Cafeteria.

Q. It is still running under the same name? A. That is right.

Q. When the picket first appeared in front of the Cosmo Cafeteria what did you do? A. I did not do anything.

Q. Didn't you go see a lawyer? A. Why should I see a lawyer?

Q. When did you see a lawyer for the first time? A. Only after we signed up the partnership agreement. 111

Q. After you signed the partnership agreement; before that you did not see any lawyer? A. No.

Q. Sure about that? A. Yes.

Q. Who drew up the partnership agreement? A. The lawyer drew the partnership agreement.

Q. So you saw a lawyer before the partnership was drawn up? A. I saw him about the partnership agreement.

Q. I thought you said you did not see him until after the partnership was signed? A. Well, about the pickets I mean.

Q. I have not asked you about that. I asked you how long after the picket appeared in front of your business did you see a lawyer; that is all I asked you and I want an answer to that question.

Mr. Delman: Objected to as immaterial. (Objection overruled.)

Q. What is the answer? A. Well, we saw a lawyer for the agreement.

113

Mr. Boudin: I did not ask that; I move to strike it out.

Q. I say, how long after the picket appeared in front of your business did you see your lawyer? A. About the 22nd, when we signed up the agreement.

Q. Was that the first time you saw your lawyer? A. Yes.

Q. The 22nd? A. That is right.

Q. You did not see your lawyer between the date of the appearance of the picket in front of your store and the 22nd? A. No.

111 Q. When did the picket appear in front of your premises? A. About the 14th or 15th of April.

Q. And you say you did not see your lawyer between the 14th of April and the 22nd of April? A. No.

Q. And when you saw your lawyer for the first time on April 22nd, where did you see him? A. Called him up in his office.

Q. I did not say where you called him; I said where did you see him. A. In the Cosma Cafeteria.

Q. Did he come up to the Cosmo Cafeteria? A. We called him to come up.

Q. You called him and he came up to the Cosmo Cafeteria? A. Yes.

Q. And that was on April 22nd? A. That is right.

Q. What time of the day was it when he first came there? A. What?

Q. What time of the day was that when your lawyer first came to the Cosmo Cafeteria on April 22nd?

Mr. Delman: Objected to.

(Objection sustained: defendant excepts.) 116

Q. Where was this paper, the alleged agreement which is marked in evidence as Plaintiffs' Exhibit No. 1, signed?

The Court: We don't care where it was signed.

Mr. Boudin: On the question of credibility.

The Court: No, we are not going to have all the details of what time the lawyer got there and what time it was signed. We have a certificate.

Mr. Boudin: If your Honor please, we claim this is a fraud: we have a right to prove fraud. 117

The Court: All right: we will get the date of the certificate.

Mr. Boudin: I don't care about the date of the certificate. We intend to prove this is a fraud. We therefore have a right to go into that.

(Objection sustained: defendant excepts.)

Q. Were all the people present in the same room when this agreement was signed, this Plaintiffs' Exhibit No. 1?

Mr. Delman: Objected to.
(Objection sustained; defendant excepts.)

Q. Were both of these papers, Plaintiffs' Exhibit No. 1 and Plaintiffs' Exhibit No. 2, signed at the same time or at different times? A. The same time.

Q. Both in your place of business? A. Yes.

119 Q. Were they signed on the occasion when the lawyer first appeared in your place?

Mr. Delman: Objected to.
(Objection sustained; defendant excepts.)

Q. When the lawyer came to your place of business did he have these papers with him?

Mr. Delman: Objected to.
(Objection sustained; defendant excepts.)

Q. How long did the lawyer stay in your place of business when he got there on April 22nd the first time, assuming he was there at one time or—

120 The Court: Hadn't we better find out who the lawyer was?

Mr. Boudin: Yes, perhaps we ought to identify him. I take it it is the same lawyer appearing for the plaintiff. I withdraw the other question and let us put the question the Court suggested.

Q. Was the same lawyer who now appears for you here as attorney for the plaintiff, the lawyer

who prepared these papers? A. The same lawyer prepared the papers that is here now?

Q. Yes. A. Yes.

Q. What is his name? A. David L. Delman.

Q. Was this lawyer only once that day in your place of business, or more than once?

Mr. Delman: Objected to.

(Objection sustained; defendant excepts.)

Q. On this occasion when he got there how long did he stay there?

Mr. Delman: Objected to. 122

(Objection sustained; defendant excepts.)

Q. When you called him on the telephone, as you said you had called him, before he came there, did you have a long conversation with him or a brief one?

Mr. Delman: I object to that.

(Objection sustained; defendant excepts.)

Q. May I ask you how long did that conversation last?

Mr. Delman: Objected to.

(Objection sustained; defendant excepts.) 123

The Court: You have enough of that. They made an agreement; whether they made it that day or some other day, or a month afterwards, you have the date when the picket went there and you have the date when this agreement is alleged to have been signed.

Mr. Boudin: We claim they never made an agreement, except the lawyer and himself.

The Court: All right; there is the agreement.

Mr. Boudin: That does not mean anything.

The Court: As far as your rights are concerned, that is your case.

Mr. Boudin: If your Honor please, in an action in fraud, the slightest detail may sometimes point the way in which the fraud was committed, and I think we have a right to bring out these details for your Honor's benefit, as well as for the benefit of the Court that may review it.

The Court: The question is whether they can do this thing; that is what you are concerned about. You are not concerned in this case whether there was fraud; you are concerned with whether or not they can do what they did.

Mr. Boudin: No, sir; that is not the point.

The Court: Oh, yes, it is.

Mr. Boudin: We claim people have a perfect right to become partners, but we claim this is a fraud, a pretended partnership.

The Court: There is what was done and that speaks for itself. The Court can interpret fraud out of that, if it wants to.

Mr. Boudin: If people were bound by paper writing in fraud actions, fraud could never be proved, because a paper never says "I am a fraud." The paper pretends to be an innocent transaction.

The Court: They say they did that, and it is of very recent date. The only way that can be determined in my mind is lapse of

time. Time will tell whether they were sincere, or whether they did it for a particular purpose.

Mr. Boudin: Will your Honor wait with the judgment for this particular time?

The Court: No.

Mr. Boudin: That is why we must prove it today.

The Court: I say, then you have your remedy, if it works out otherwise.

Mr. Boudin: What kind of remedy would we have? I would like to be enlightened. I have given considerable thought——

128

The Court: I don't need to tell you. All you need do is to put pickets there; that will bring it up.

Mr. Boudin: We have pickets there today. They want your Honor to say they should not be there. If your Honor says that, that is the end of the matter.

The Court: I don't think you need all this for your case.

Mr. Boudin: The question of what I need for my case, naturally, I must determine, in the first instance. Your Honor has the right to say I am wrong, but I must be guided by my own lights.

129

The Court: All right; you have indicated what you want, and I have ruled on it.

Mr. Boudin: I want to establish that the other people knew nothing about this, that this was concocted between the lawyer and this man on the witness stand, and the other people were told to sign, and they signed without knowing what it was. That is our

130 *Louis Loizides—For Plaintiffs—Cross.*

contention, and I want to prove it by cross-examination if I can.

The Court: Proceed.

Q. Now, Mr. Loizides, do you know anything about the World Cafeteria?

Mr. Delman: I object to that, not within the issues in this case.

(Objection sustained.)

Mr. Boudin: If your Honor please, we take an exception. We desire to prove this is a part of a large scheme whereby a num-
131 ber of employers have agreed on the same scheme of beating the law, and therefore I want to show this man's connection with the World Cafeteria, in which the same thing was done.

(Objection sustained; defendant excepts.)

The Court: You may ask him if he is a partner.

Mr. Boudin: I asked him whether he knows anything about it.

The Court: We don't want hearsay.

Mr. Boudin: That is not hearsay.

The Court: You may ask him if he is a partner in the World Cafeteria.

132 Mr. Boudin: He says lots of people are partners who are not.

The Court: I want to apologize for inciting an objection. I am going to keep quiet.

Mr. Delman: Is colloquy between Court and counsel a part of the minutes? The stenographer takes it down.

Mr. Boudin: Yes, I prefer it should be taken. Everything that happens in a court should be on the record.

Mr. Delman: It makes the record expensive.

Mr. Boudin: I will pay for the record, I assume.

The Court: We are going to stop talking. Proceed with the trial.

Q. Do you know whether or not the World Cafeteria was partnerized about the same time the Cosmo Cafeteria was partnerized?

Mr. Delman: I object to that, partnerized.

(Objection sustained.) 134

Q. Do you know who is the owner of the World Cafeteria?

Mr. Delman: Objected to.

(Objection sustained; defendant excepts.)

Redirect examination by Mr. Delman.

Q. Have you the lease, Mr. Loizides, with you? A. Yes (producing paper).

Mr. Delman: I offer the lease in evidence; the agreement between the B. Realty Corporation and this witness, Louis Loizides. 135

The Court: I thought you wanted to keep the record small.

Mr. Delman: I want to show it is not assignable. Let me read this provision into the record and I won't offer the whole thing.

Mr. Boudin: You cannot read one provision. If you offer it in evidence, and it is proper, it will go in. I object to your read-

136 *L. Loizides—For Plaintiffs—Redirect—Recross.*

ing any provision from a document that is not in evidence.

Mr. Delman: I offer the lease in evidence.

Mr. Boudin: Objected to as incompetent, irrelevant and immaterial.

The Court: What? Do you object to the lease?

Mr. Boudin: No, I don't object to it—but only to the lease, nothing else.

(The lease was received in evidence and marked Plaintiffs' Exhibit 3.)

137 Q. Did you ask the landlord for permission to assign this lease to the partnership?

Mr. Boudin: Objected to.

(Objection sustained.)

Mr. Delman: I direct the Court's attention to paragraph four of the lease.

Mr. Boudin: That is not the way of proving it, any way.

Q. When the pickets were established, what did you see the pickets do—you personally?

Mr. Boudin: My associate calls my attention to the fact that I omitted to ask the
138 witness some questions that should be brought out first.

The Court: Proceed.

Cross-examination (resumed) by Mr. Boudin.

Q. Have you got a bank account, or has this business got a bank account? A. Yes.

Q. When was the bank account opened? A. The bank account, what name?

Q. What? A. The bank account on what name?

Q. On the name of the Cosmo Cafeteria. A. That was opened last Monday.

Q. Did you have a bank account before? A. Yes.

Q. Where was that? A. That was in my name.

Q. What? A. On my name.

Q. Where; I did not ask you— A. Public National Bank.

Q. Is it still there? A. Yes.

Q. The bank account is still there? A. Yes.

Q. Have you got two bank accounts now, or one? A. One.

Q. You mean this bank account, your old bank 140
account was transferred to the new name? A. Cosmo Cafeteria.

Q. When was that done? A. Last Monday.

Q. That is June 12th? A. No, it is more than that.

Q. You mean the day before yesterday, June 19th? A. That is right.

Q. That was after the trial of the World Cafeteria case? A. Why, yes.

Q. Up to June 19th, the old account that stood in your name in the bank continued in your name? A. Yes.

Q. When, if at all, did you transfer your fire insurance? A. When?

Q. Let us put it this way. Did you transfer your 141
fire insurance? A. Right after the partnership.

Q. When you say right after, how long after? A. Well, I don't know. I don't remember exactly how many days after; a few days after.

Q. Did you make any arrangements or changes in respect to social security or compensation insurance? A. What do you mean arrangement

142 *Louis Loizides—For Plaintiffs—Recross.*

Q. What? A. What kind of arrangements?

Q. Have you made any changes? A. Yes.

Q. I take it you had workmen's compensation? A. Yes.

Q. Did you make any changes in that? A. I cancelled that.

Q. You cancelled that when? A. Right after the partnership.

Q. When you say right after, how long after? A. A few days after.

Q. What do you call a few days? A. I don't remember exactly.

143 Q. Have you got a record of it? A. I have a record of the cancellation of the policy, but I notified the company right away.

Q. The same day? A. Not the same day, but a few days after, two or three days after.

Q. Did your lawyer tell you to do that, or your insurance broker tell you to do that? A. The lawyer did not tell me to do that.

Q. What? A. Nobody told me to do it.

Q. You did it of your own accord? A. Yes.

Q. You knew the law on the subject? A. I know there is no workers, there is no workmen's compensation.

Q. That is quite clear to you?

144 Mr. Delman: I object to that.

Q. How much money, if any, did these partners of yours invest in the business? A. A certain percentage.

Q. Let us say, how much did Tsakires invest?

Mr. Delman: Objected to. The agreement speaks for itself.

Mr. Boudin: I don't know, does it?

Mr. Delman: Exhibit 2 in evidence; read it.

(Objection sustained.)

Mr. Boudin: Exception. Will your Honor please take a recess so that I can read the agreement and see exactly what it says and what it does not? I did not think I should spend time on it, but if counsel says the agreement speaks for itself, I ask the Court, respectfully, for a chance to read the agreement.

The Court: We will take a five-minute 146
recess.

(Short recess.)

Q. Mr. Loizides, did you obtain a Board of Health permit for the running of these restaurants? A. Yes, sir.

Q. When? A. Well, last year.

Q. Was that changed to the partnership? A. No; it expires this month, so it is going to be changed this month.

Mr. Boudin: I move to strike out "it is going to be changed this month."

(Motion granted.)

147

Q. How much money, if any, did Mr. Tsakires either give you or pay into the treasury of the partnership prior to or upon or after the signing of this agreement which is in evidence as Plaintiffs' Exhibit No. 1? A. They gave me notes.

Q. What? A. They gave me notes.

Q. Will you please answer the question? How much money, if any, did they give you? A. You mean cash money?

148 *Louis Loizides—For Plaintiffs—Recross.*

Q. Yes. A. They did not give any cash money.

Q. You volunteered the statement he gave you a note? A. Yes.

Q. Have you got these notes? A. Yes.

Q. Let us look at them. A. (Notes produced.)

Q. Mr. Loizides, you have handed me a batch of eight notes, eight promissory notes. Are these the notes that your partners gave you at or about the time of the signing of this agreement? A. Yes.

Q. So that none of the partners gave you any money? A. Cash money, no.

Q. Each one of them gave you a note?

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The Court: He has answered that.

Q. I show you this paper writing purporting to be a promissory note signed by Tsakires, and ask you whether you claim that that is the note which he gave you at or about the time of the signing of this agreement? A. This is the note.

Mr. Boudin: If your Honor, please, I offer this for identification.

Mr. Delman: Offer it in evidence.

Mr. Boudin: I don't want to offer it in evidence. I claim this is a fraudulent note. Why should I offer it in evidence?

150

(The paper was marked Defendant's Exhibit A for Identification.)

Mr. Boudin: I would like to know whether counsel for the plaintiff will stipulate that these eight pieces of paper, purporting to be promissory notes signed by the eight plaintiffs other than the one on the witness stand, all purport to be due one year from April 2, 1939.

Mr. Delman: Well, whatever they are, they are.

Mr. Boudin: I don't know. I ask for a stipulation. The record does not know what they are.

Mr. Delman: You may read them into the record.

Mr. Boudin: I am not going to read anything into the record which I believe to be fraudulent.

Mr. Delman: I object to these remarks. He is beginning to accuse me every two minutes. 152

Mr. Boudin: I want to know if counsel will stipulate.

Mr. Delman: I will offer these notes in evidence myself.

Mr. Boudin: If you offer them, I may object to them. That is why I did not want to offer them. I now want to know whether you will stipulate; will you stipulate that all of these eight promissory notes are due one year after April 22, 1939?

Mr. Delman: I will stipulate what the notes say, of course.

Mr. Boudin: Is that the stipulation?

Mr. Delman: Let me see them, please. (After examining notes) Yes, they are all due one year from April 22, 1939. 153

Q. Now, Mr. Loizides, did your attorney when he came to you on that day, on April 22, 1939, have these eight notes with him? A. No.

Q. Were they signed while he was there? A. No.

154 *Louis Loizides—For Plaintiffs—Recross.*

Q. When were they signed?

Mr. Delman: I object to that.
(Objection sustained; defendant excepts.)

Q. How much did these various partners of yours receive as salary before this paper writing which is in evidence as Plaintiffs' Exhibit No. 1 was signed?

Mr. Delman: I object to that as immaterial.
(Objection sustained; defendant excepts.)

155

Q. Are they now receiving, respectively, the same amounts as drawing accounts under the paper writing?

Mr. Delman: I object to the form of the question.

Q. Or purportedly under the paper writing?

Mr. Delman: I object to the form, because the answer would be meaningless; the same amount as what?
(Objection overruled.)

156 Q. That they received before as salaries? A. They received about the same.

Q. When you say about, were there any changes? A. Yes.

Q. What changes were there, if any? A. If some of them people need more, and——

Q. I am not asking you about "if". I am asking about the drawing account under the agreement. Is the drawing account fixed by the agreement the

same as the salaries they had previously been receiving, respectively? A. They received the same.

Mr. Delman: I offer these eight notes in evidence.

Mr. Boudin: I object to them on the ground they are irrelevant, immaterial and incompetent.

(Objection sustained; plaintiffs except.)

Redirect examination by Mr. Delman.

Q. What did you see the picket do in front of your place? A. The picket stopped people from coming in the store. 158

Mr. Boudin: I object to that as calling for a conclusion—saw them stopping.

The Court: I heard it but I did not understand it.

The Witness: I saw the picket stop customers from coming in the store.

Mr. Boudin: I move to strike it out, being a conclusion of the witness.

(Motion granted.)

Q. What did you see them do? A. I saw them tell them that the food is no good. 159

Mr. Boudin: I move to strike that out. That is clearly not responsive. He could not see them tell.

(Motion denied; defendant excepts.)

Q. Did you yourself hear the pickets talk? A. Yes.

160 *Louis Loizides—For Plaintiffs—Redirect.*

Q. Please tell his Honor what you yourself heard. A. I heard them telling customers not to come in, because we don't serve good food, and we do not pay our people right, and they sent them to other restaurants.

Mr. Boudin: I move to strike out the statement saying we heard them say to customers they did not serve good food, because there is no such allegation in the complaint and we are not prepared to try such an issue. That is purely an afterthought.

161 (Motion denied; defendant excepts.)

Q. What else did you hear about saying to customers? A. Hear them insult customers.

Mr. Boudin: I move to strike that out.
Mr. Delman: Consented to.

Q. What did you hear them say; don't characterize it. A. They called them pigs.

Mr. Boudin: Objected to for the same reason; there is no such allegation in the complaint.

162 (Objection overruled; defendant excepts.)

Mr. Boudin: If your Honor please, I now move to strike out the testimony of this witness with respect to the alleged statement by pickets, upon the ground that it is indefinite as to time, place, so that we could not possibly either controvert it, or perhaps prosecute for perjury, if it should turn out to be untrue.

(Motion denied; defendant excepts.)

WALTER BIETSCH, of 1945 Clinton Avenue, Bronx, New York City, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination by Mr. Delman.

Q. Mr. Bietsch, are you one of the customers of the Cosmo Cafeteria at Tremont Avenue? A. Yes.

Q. Did you have occasion to go there with your wife since the picketing has started? A. Yes, sir.

Q. Tell us when the last time is that you went into the store. A. I was in the Cosmo as late as last night. I am regularly eating there ever since 164
I have lived in the neighborhood.

Q. Have you been approached by pickets, you and your wife? A. Yes.

Q. When? A. Time and time again, as the pickets changed; I have been insulted time and time again.

Q. Exactly what did they say to you and your wife? A. I personally witnessed my wife being slandered right in front of the place.

Mr. Boudin: I move to strike that out.

Mr. Delman: That is consented to.

Q. Don't use words like that; tell us what you 165
heard them say. A. In the first place, there was a woman picket.

Q. Go on. A. And she insulted my wife, she called her a pig for not co-operating with the sign that she was carrying on her back.

Q. What else did they say? A. They told them, in the first place, the food is not worth-while eating, to which my wife contradicted the statement by saying, "I have been eating here for two years."

Q. What else did they say? A. I was asked by a picket that changed, interchanged with her, after she left the picket line, there was a man replacing her that is not in court.

Q. What did he say to you? A. He came over, he said, "Why don't you give me a break?" I said, "Listen, I have patronized this place ever since I am living in the neighborhood, and I refuse to take your advice." Naturally he was insulting and——

Mr. Boudin: I move to strike that out.
(Motion granted.)

167 Q. What did he say? Don't characterize it. Is that all he said? Have you told us all? A. Practically; he used words that were unbecoming anybody.

Mr. Boudin: I move to strike that out.

Q. What words did he say? A. It is hard to say; they were all profane language.

Mr Boudin: I move to strike it out.
(Motion granted.)

Q. Have you seen them approach other customers, too? A. Absolutely.

168 Q. And use the same language? A. Practically, yes.

Cross-examination by Mr. Boudin.

Q. Mr. Bietsch, where do you live? A. 1945 Clinton Avenue.

Q. How far is that from this store? A. About 50 feet.

Q. Were you standing in front of this cafeteria watching the picket? A. I am sitting right in front; the lunch counter is situated——

Q. You mean you were sitting in front of your house? A. What?

Q. When you say you were sitting at the entrance, whose entrance? A. At the entrance to the cafeteria.

Q. You sat there; what do you mean by sitting there? A. The location of the lunch counter?

Q. Yes; you mean while you are inside? A. While I am inside.

Q. And the pickets were outside? A. Yes. 170

Q. And you heard from where you were sitting inside what the pickets were saying to people outside? A. Absolutely; the doors are kept open.

Q. How frequently do you sit at this lunch counter? A. Three times a day.

Q. Also your wife? A. No, twice a day for my wife.

Q. You don't keep house? A. Well, I am a night worker; naturally it is more convenient for us to eat meals according to my hours.

Q. What is your employment, if I may ask? A. I am down in Wanamaker's maintenance mechanic in Wanamaker's.

Q. How long have you been there? A. Eight years. 171

Q. Did you ever have any trouble with any unions? A. None that I know of.

Q. What? A. None that I know of.

Q. Sure about that? A. Absolutely.

Q. How long have you known Mr. Loizides, the plaintiff in this case? A. I am married, let us see, almost three years; and Louis has been there about the same time.

Q. Three times a day for three years? A. Me, not my wife.

Q. You have been going in his place? A. Yes.

Q. So has your wife; you are pretty friendly? A. Not exactly.

Q. Were you subpoenaed here? A. No, sir.

Q. You were asked to come down and you were obliging? A. I said I would come as a witness.

Q. I understand; here you were asked to come down, and you naturally would oblige a neighbor? A. No one asked me any questions; oh, no, you are wrong.

173 Q. I have not asked you anything about questions. I say, you were asked to come down and it was natural for you to come down, being a neighbor and a customer for three years? A. Yes.

Mr. Delman: I object to the form of the question, the use of the word natural.

(Objection overruled.)

Mr. Boudin: Well, it may be unnatural; I think it is unnatural.

The Court: I overruled the objection.

Q. Do you know any of the other customers that come there? A. Yes.

Q. Regularly? A. Yes.

174 Q. Can you name them? A. Well, the names I could not give you, the last names.

Q. But you see them all the time? A. Yes.

Q. The same set of customers coming down there? A. Yes.

Q. Do you see any of them in court? A. No; they are unfortunate; they are working days.

Q. They are unfortunate, they work days; how do you know all that? A. The crowd I mingle with.

would sit there, the customers, natural to talk—that is friendly conversation that goes on over the lunch counter.

Q. I see; you take considerable interest in this case, apparently. A. Absolutely.

Mr. Boudin: All right, that is all.

ELIAS TSAKIRES, of 1348 St. Nicholas Avenue, New York City, one of the plaintiffs, called as a witness on behalf of plaintiffs, being first duly 176 sworn, testified as follows:

Direct examination by Mr. Delman.

Q. You are one of the plaintiffs in this case, are you? A. Yes.

Q. Plaintiffs' Exhibit No. 1 in evidence, Mr. Tsakires, I ask you whether this bears your signature? A. Yes.

Q. Do you recall the meeting of employees prior to the date when this agreement was signed? A. Yes, I do.

Q. Pursuant to that meeting you decided to become partners? A. Yes, that is right. 177

Mr. Boudin: I move to strike out the answer and object to the question as calling for a conclusion.

(Motion granted.)

Q. It was following that meeting that this agreement was signed; is that right? A. That is right.

Q. You gave your note? A. I did.

Cross-examination by Mr. Boudin.

Q. Mr. Tsakires, what naturally is your employment—I mean, what do you do in the cafeteria? A. I am a counterman and an all-around man.

Q. How long have you been that? A. I worked at the same place last summer; I left in the winter time and I came back about three or four weeks before the picketing started.

Q. How long have you been in their employment altogether? I mean, how long have you been em-
179 ployed as a food worker? A. Since I came to this country, 1930.

Q. How much were you getting paid, what was your salary before this alleged partnership agreement was signed?

Mr. Delman: I object to that.
(Objection overruled.)

A. It was $19.

Q. Do you keep a bank account? A. Of my own?

Q. Yes. A. Yes, my father.

Q. I asked you have you got a bank account.

180 Mr. Delman: Objected to, incompetent, irrelevant and immaterial.

Q. You understand the question, don't you? A. Yes.

Q. Have you a bank account? A. No, sir.

Mr. Delman: I object.
(Objection overruled.)

Q. Neither savings nor business? A. No, sir.

Q. Any safe deposit vault?

The Court: I think probably we don't need to go into that. Objection sustained.

Mr. Boudin: He may not need it; we may because he has not got any. I think your Honor should permit that question.

The Court: We don't need to go into that.

Q. Have you $1,500 in cash anywhere? A. No, sir.

Q. Have you ever had $1,500 since you have been in this country? A. I have. 182

Q. You did have? A. Yes.

Q. When? A. Two years ago.

Q. What became of it? A. I went into business.

Q. And you lost it? A. Yes.

Q. And you haven't had any since—that is all.

(Plaintiffs rest.)

Mr. Boudin: If your Honor please, we move to dismiss the complaint upon the ground that they have failed to make out a cause of action as pleaded, or any cause of action for injunction under the statute, and under the law governing this class of cases.

(Motion denied. Defendant excepts.) 183

DEFENSE.

Mr. Boudin: Mr. Delman, will you please take the witness stand?

184 *David L. Delman—For Defendant—Direct.*

DAVID L. DELMAN, of 915 East 179th Street, Bronx, New York City, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Boudin.

Q. Mr. Delman, you are the attorney for the plaintiff in this case? A. Yes.

Q. You were also the attorney for the plaintiff in the case of Angelos against Meservich, tried in this Court the other day before Judge Leary? A. Yes.

185 Q. I show you this paper writing marked in evidence as Plaintiffs' Exhibit No. 1, and I ask you whether you prepared that? A. Yes, sir.

Q. I show you this paper writing which is Plaintiffs' Exhibit No. 2, purporting to be a certified copy of a filed document, and ask you whether you prepared the original and caused it to be filed? A. Yes, sir.

Q. And you had similar documents prepared and filed—that is the one that needs to be filed—in the other case of Angelos against Meservich? A. Yes.

Q. On the same day? A. I believe so.

Q. The alleged partnership agreements were
186 drawn on the same day, and the alleged certificate of doing business the same day? A. They were drawn the date they bear; I could not say that, whatever date it bears.

Q. Do you remember what date they bore in the other case? A. I did not hear that.

Q. Don't you remember the date of the other papers? A. Offhand I really don't. I believe they are the same date. I am not certain.

Q. Did you visit the other man's place of business also, the World Cafeteria, just as you visited

the Cosmo Cafeteria on that day? A. I have been eating—on that day?

Q. Yes. A. I visit them every morning.

Q. Just yes or no. A. I am there every morning, so I assume I was there that day, too. I have breakfast there every day for many years.

Q. This was not breakfast time when these papers were prepared? A. Well——

Q. At which place do you eat breakfast, Cosmo or World? A. One day I eat at the World, one day at the Cosmo. I have been doing that for many, many years.

Q. On this particular day, April 22nd, did you 188
have your breakfast at the Cosmo or the World? A. I could not remember that.

Q. You heard Mr. Loizides say that he called you on the telephone? A. That is right.

Q. That day, and asked you to come up? A. That is correct.

Q. Apparently you did not either have breakfast there, or he did not ask you at breakfast time? A. Neither statement is correct.

Q. You did have breakfast at the Cosmo and he did talk to you, I take it, at breakfast; is that so? A. Certainly; I talk to him every morning.

Q. But you said a minute ago you did not know whether you were there that morning for breakfast. A. I did not say that—oh, I don't know 189
whether the Cosmo or the World; it was one of the two.

Q. Mr. Witness, you are a lawyer; didn't you hear my question? I asked you, you said neither was true. A. I said neither of your statements was true, not neither of my statements.

Q. So you were there at breakfast when you did talk to him? A. I have no doubt it was one of those two restaurants, and spoke——

Q. I am speaking of the Cosmo, Mr. Delman. A. I cannot remember if I had breakfast at the Cosmo.

Q. Then how do you know it is not true that you did not speak to him at breakfast? A. Why, I often meet one of the brothers at the other's restaurant at breakfast. I don't understand the question.

Q. Mr. Delman, do you understand English? A. I used to teach English, sir. I understand it very well. I don't understand your English.

Q. I asked you this question, were you at the
191 Cosmo that morning, and did he speak to you at breakfast, and you said neither of these statements was true. Now I ask you, how do you know that the statement that you were there at breakfast was not true if you have no memory about it?

The Court: You don't have to answer that question.

Mr. Delman: I object to it as immaterial.

The Court: Objection sustained.

Mr. Boudin: Objected to as embarrassing; that is a proper objection.

The Court: No; next question.

Mr. Boudin: I take an exception; that is all. Is Mary Yorwick here? Mary Yor-
192 wick, one of the plaintiffs. (No response.)

I ask counsel whether his plaintiffs are here or not.

Mr. Delman: I have a good many of them here.

Mr. Boudin: Will you tell me whether Mary Yorwick is here?

Mr. Delman: I don't know their names. There is another plaintiff here, another female.

Mr. Boudin: I have asked about Mary Yorwick.

Mr. Delman: She did not answer, so she is not here.

Mr. Boudin: You assume she is not here.

Mr. Delman: That is right.

Mr. Boudin: Is the other plaintiff, Stella Bellas, here—all right, please take the stand.

STELLA BELLAS, of 528 West 143rd Street, New York City, one of the plaintiffs, called as a witness on behalf of the defendant, being first duly sworn, testified as follows: 194

Direct examination by Mr. Boudin.

Q. Miss Bellas, you are one of the plaintiffs in this case? A. I am.

Q. How long were you working in the Cosmo Cafeteria before April 22, 1939? A. About two or three weeks before the time.

Q. How much were you getting there? A. How much was I getting?

Q. Yes. A. $10 a week and my tips.

Q. How much? A. Ten a week and my tips.

Q. Are you still getting ten a week and your tips? A. I am drawing the same. 195

Q. You are getting a drawing the same and getting your tips? A. I certainly am.

Q. Those are not drawings? A. No.

Q. Where did you work before that?

Mr. Delman: I object to that as immaterial.

(Objection sustained: defendant excepts.)

196 *Stella Bellas—For Defendant—Direct.*

Q. Have you any bank accounts, savings bank or business bank accounts? A. Am I entitled to answer that?

Mr. Delman: I object to that as immaterial.

(Objection sustained; defendant excepts.)

The Court: Wait a minute; is there anything on the record that she paid cash?

Mr. Boudin: No, she gave a promissory note, supposedly.

197 The Court: Is there any evidence in the case she paid cash for her interest?

Mr. Boudin: No.

The Court: All right, I sustain the objection.

Mr. Boudin: Exception. If your Honor please, the purpose of this is to show there could not have been possibly any expectation these people could ever pay their notes.

The Court: I have the idea.

Q. Have you any cash, Miss Bellas? A. I have.

Q. $750? A. No.

Q. Neither in a bank nor at home or a chest, or anywhere else? A. No, not that much.

198 Q. You have not paid anything to Mr. Loizides? A. I have not.

Mr. Boudin: I take it your Honor will rule the same way as the others, that it is immaterial whether they have money or not.

The Court: Yes. Because people give notes payable in thirty days or sixty days, it does not necessarily imply they have to have the money on that day.

Mr. Boudin: If your Honor please, I have not asked for an opinion: I have asked for a ruling.

The Court: What is that?

Mr. Boudin: I say I have asked for a ruling so as to know whether to call the other witness.

The Court: You ask for a ruling?

Mr. Boudin: Yes.

The Court: I will not rule, then.

Mr. Boudin: I will then call the others. I ask your Honor to make a ruling to save time. 200

The Court: If you are going to ask it, you should ask it in a nice, polite way.

Mr. Boudin: I hope I was polite; I did not mean to be impolite.

The Court: No, you were not.

Mr. Boudin: I hope I have not offended your Honor; I did not mean to.

The Court: It sounded like it to me.

Mr. Boudin: I have not intended to offend your Honor. What I wanted to say was, I wanted to know whether I should call these witnesses, or your Honor will have this ruling stand as to all of them, that is all.

The Court: You asked something about 201
a note: I said the fact they did not have money did not indicate to me that a person would have to have money, or any court would rule it was necessary for them to have the specified amount at the time the note was due.

Mr. Boudin: And I said that you did not give me the ruling asked for. What I wanted to know was whether I should call those witnesses. That was the purpose of

my asking your Honor whether I should call them, or save time by your Honor making that ruling, that that applies to all of them.

The Court: I don't know what ruling you asked for now.

Mr. Boudin: When I called this witness and asked her whether she had any money or not, your Honor ruled that was immaterial. Now I can call seven more and ask them the same question, or I can save the Court and myself the trouble of doing so if your Honor will say that the ruling stands
203 as to all, and give me an exception. That is all I asked your Honor. I don't know why your Honor took offense. I ask your Honor now.

The Court: I am not ruling.

Mr. Boudin: Is Miss Mary Yorwick here?

Mr. Delman: You called the name three times.

Mr. Boudin: I would like Mary Yorwick produced. If I have to put them all on the witness stand, I want counsel to produce those plaintiffs so that I can put them on the witness stand and ask them questions.

204 Mr. Delman: They were subpoenaed for the last trial. I assumed if you wanted them you would subpoena them again.

The Court: I rule then, if the plaintiffs are called and if they are asked, "Have you any cash or any money at this time," and it is objected to, I will sustain the objection.

Mr. Boudin: And as to whether they ever had a bank account, or what not, or any safe deposit box, the ruling would be the same.

The Court: Yes.

Mr. Boudin: All right; I take an exception to that, and save ourselves the trouble.

RALPH DEL PINO, of 1268 Olmstead Avenue, Bronx, New York City, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Boudin.

Q. Mr. Del Pino, what is your business or occupation? A. Business agent, Cafeteria Employees 206
Union, Local 302.

Q. Speak louder. A. Business agent of Local 302.

Q. How long have you been business agent? A. About two years.

Q. You know this place where the Cosmo Cafeteria is being conducted? A. I do.

Q. And you also know the place where the World Cafeteria is being conducted? A. I do.

Q. Is that within your district? A. That is correct.

Q. What do you call it, inspection district, business district? A. In our line of business we call it our territory. 207

Q. To which you are assigned by your union for the purpose of organization and such other duties as a business agent of a union may perform? A. That is correct.

Q. Do you know Mr. Loizides? A. I do.

Q. Have you ever had any conversations with him? A. I have.

Q. When was that? A. I had a conversation with him around—it was around the 12th of April when I first spoke to Mr. Loizides.

Q. What did you discuss with him—the possibility of signing an agreement with the union? A. That is correct; I attempted to, and I could not, because Mr. Loizides cut me short.

Q. You also asked him to sign an agreement with the union? A. Yes.

Q. And he refused to do that? A. That is correct.

Q. And did you thereupon place a picket, or picket line as it is usually called, in front of the Cosmo Cafeteria? A. The following day.

Q. That was about the 13th of April? A. More
209 or less; I am not certain.

Q. When I said a picket line, what did that consist of? A. One man with a sign.

Q. One man? A. One man.

Q. Did you ever have more than one picket in front of these premises? A. Never did.

Q. How often have you been around to see what was going on there? A. I go around there to inspect the picket line an average of once a day, sometimes twice a day, morning and afternoon.

Q. Have you ever noticed any disorder or any altercations or anything else going on in front of these premises? A. None whatsoever.

Q. Just state to the Court what was your picket
210 doing, what did you see him do, if anything? A. Just walking up and down in front of the door without speaking to anyone, because they are instructed by us not to speak to anyone.

Mr. Delman: I move to strike out the latter part, because——

(Motion granted.)

Mr. Boudin: I take an exception. This is an action against a union, not against Mr.

Del Pino, therefore our instructions are important. I think we are entitled to show what our instructions are. Will your Honor change the ruling?

The Court: No; sustained.

Mr. Boudin: I take an exception.

Cross-examination by Mr. Delman.

Q. You pass by in your car, isn't that right, the various places that are being picketed? A. No, sir.

Q. You have a car, have you not? A. Yes. 212

Q. You travel around in the car inspecting your territories? A. Correct.

Redirect examination by Mr. Boudin.

Q. Do you inspect each one from the car or do you get out and walk? A. I use my car to travel from place to place. I leave my car and go to the picket and ask him what is the situation.

Q. You park it somewhere in the neighborhood? A. Somewhere in the neighborhood.

Q. Then you go and inspect? A. Yes.

Q. And make a careful inspection? A. That is correct.

Q. Spend a little time there to see what is actually going on? A. Always, especially a picket line. 213

Q. You never observed in this picketing any disorder or anything of the sort? A. Never have.

Q. Nor have you ever noticed them talking to any customers or anybody else? A. They don't talk to any customers.

(No cross-examination.)

214 *Chris Panos—For Defendant—Direct.*

CHRIS PANOS, of 40 West 95th Street, New York City, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Boudin.

Q. Mr. Panos, what is your business or occupation? A. Associate labor chief, Local 302.

The Court: Labor chief?

The Witness: That is right.

215 Q. Local 302, Cafeteria Workers Union, the defendant in this case? A. That is correct.

Q. What are your duties as associate labor chief? A. I distribute employment among the membership of the union.

Q. Do you sometimes negotiate with employers? A. I do.

Q. Do you know Mr. Louis Loizides? A. Yes, for several years.

Q. Do you remember having any conversation with him? A. In reference to the case concerned?

Q. Yes. A. Yes.

Q. In reference to this case; when and where was that? A. It was about three or four weeks ago. I don't recollect the exact date.

216 Q. Three or four weeks after what? A. Ago.

Q. Ago? A. That is right.

Q. From now on, that is today is the 21st of June—am I to understand that was some time towards the end of May? A. That is correct; about that time.

Q. Where was the conversation? A. Over the phone.

Q. Did you call him or did he call you? A. No, I called him.

Q. When you called him what did you say to him? A. I referred him to our personal friendship——

Q. Oh, you are a personal friend— A. Yes.

Q. I did not know that: you have known Mr. Loizides for a long time? A. For a good many years, yes.

Q. You are a personal friend of his you now tell us? A. That is right.

Q. You called on him, referring to your personal friendship, then what else did you say to him? A. Suggested to him if it was possible we should get together and settle the difference between this 218
shop, his store, and the union, for the good and welfare of both concerned.

Q. What did he say? A. He said, "Well", he said, "I am willing to talk, but after all, I cannot very well do anything myself. I have partners", and so on and so forth, and I made the suggestion that maybe we should get together some time, we would talk things over. He says, "All right, any time you want".

Q. Well, did you go up there? A. Yes, I did.

Q. What did you say to him and what did he say to you? A. I went into his store about two hours later, I believe, with Del Pino together. I made the suggestion again and at that time he says, 219
"Well, between the time I spoke to you on the phone and now, I have consulted my lawyer and I don't want to talk any more about it".

Q. That was the nature of that conversation? A. I repeated again——

Q. Yes, I understand; you did not get any further, beyond that? A. That is all; we left.

By the Court.

Q. With whom were you talking? A. With Mr. Loizides.

Q. Which one? A. Mr. Louis Loizides.

(No cross-examination.)

Mr. Boudin: That is all; that is our case, if your Honor please.

Mr. Delman: The plaintiffs rest.

Mr. Boudin: We renew our motion to dismiss the complaint on the ground that
221 they have failed to make out the cause of action as pleaded, or any cause of action at all within the statute and the law governing the subject. If your Honor would like to have a more extended statement of our points, I would like to submit a memorandum.

The Court: I had this question last week, and I cannot do anything other than to follow the decision I made in that case.

Mr Boudin: The Supreme Court has changed its opinion, your Honor.

The Court: The same questions are involved, as I see it, whether or not they made
222 this arrangement in good faith, and I don't know how it can be determined at this time; it can only be determined by time.

Mr. Boudin: I hope your Honor does not consider yourself bound by your Honor's ruling. I seriously urge upon your Honor the reconsideration of your ruling.

The Court: That was my conviction at the close of the other trial and I do not see anything in this trial to change it.

Mr. Boudin: Will your Honor take a brief on the subject?

The Court: No. I will give judgment for the plaintiff.

Mr. Boudin: I take an exception, if your Honor please. I ask your Honor for a stay pending appeal.

The Court: What do you mean; permit the picketing?

Mr. Boudin: There is only one picket; there is no disorder or anything.

The Court: I will, if your opponent consents to it.

224 Mr. Delman: They removed them from the World Cafeteria. Why should this man be discriminated against?

Mr. Boudin: I think orderly picketing should be permitted to stay.

The Court: No, I don't think so, in this kind of a case. There are instances where they might be, and I have permitted them to stay.

Mr. Boudin: I know your Honor has, so have other Judges.

The Court: In this kind of case, no, unless they consent to it. In the other case the picketing was ceased.

225 Mr. Delman: In this case, it is a far more aggravated case, when they approach customers and call them pigs. We did not have that in the other case.

(Judgment for plaintiffs.)

226

Plaintiffs' Exhibit 1.

THIS AGREEMENT made this 22nd day of April, 1939, between ELIAS TSAKIRES, of 1348 St. Nicholas Avenue, New York City, KALLIS CONSTANTINON, of 2067 Mohegan Avenue, Bronx, N. Y., CHRIST LYMBOURIS, of 630 East 176th Street, Bronx, N. Y., ANGELO CONSTANTINE, of 1348 St. Nicholas Avenue, New York City, NICHOLAS RUSSOS, of 2231 Southern Boulevard, Bronx, N. Y., STELLA BELLAS, of 510 West 143rd Street, New York City; MARY YORWICK, of 303 East 53rd Street, New York City, JAMES LOIZIDES, of 751 East 178th
227 Street; Bronx, N. Y., and LOUIS LOIZIDES, of 2104 Crotona Parkway, Bronx, N. Y.

WITNESSETH:

WHEREAS, the parties to this agreement are desirous of being partners and sole owners of the business now conducted at 726 East Tremont Avenue, Bronx, N. Y., and known as THE COSMO CAFETERIA, and

WHEREAS, each of the parties to this agreement is an experienced cafeteria worker and fully understands the cafeteria business, and thus realizes the advantage of a partnership, where there will
228 be a saving of wages for outside help.

NOW, THEREFORE, it is mutually agreed as follows:

FIRST: The parties hereto shall, as partners and as more fully set forth hereinafter as to the rights of each party, engage in conducting THE COSMO CAFETERIA above referred to for a term commencing April 22, 1939, and terminating April 30, 1940.

SECOND: The firm name of the said partnership shall be THE COSMO CAFETERIA.

THIRD: A certificate of the parties hereto doing business under this name shall be filed immediately upon the execution of these presents in the office of the County Clerk of the County of Bronx, and in the office of any such other County Clerk as THE COSMO CAFETERIA may hereafter do business.

FOURTH: The business of said partnership shall be conducted at 726 East Tremont Avenue, Bronx, N. Y., and at such other place or places as the parties may by a majority vote agree. 230

FIFTH: The gross assets shall belong to the parties hereto in the proportions hereinafter enumerated and with the exceptions and provisos hereinafter enumerated.

SIXTH: The affairs of the partnership in all matters pertaining to the operation thereof shall be decided upon by the vote of any five (5) of them, by which the other four (4) hereby agree to abide unconditionally and hereby waiving any Court proceedings in case of so being overruled by the vote of five (5) of the partners.

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SEVENTH: In view of the different capabilities and duties that will be assigned to each partner, as well as the different degree of experience, the following are the percentages of the net income that each of the partners agrees to accept as his weekly drawing:

ELIAS TSAKIRES, ten (10%) per cent; KALLIS CONSTANTINON, nine (9%) per cent; CHRIST LYM-

232 *Plaintiffs' Exhibit 1.*

BOURIS, eleven (11%) per cent; ANGELO CONSTANTINE, ten (10%) per cent; NICHOLAS RUSSOS, eight (8%) per cent; STELLA BELLAS, five (5%) per cent; MARY YORWICK, five (5%) per cent; JAMES LOIZIDES, twenty-one (21%) per cent; LOUIS LOIZIDES, twenty-one (21%) per cent.

EIGHTH: In ascertaining the net profits, the following items are to be deducted from the gross income:

(a) The cost of goods sold.

233 (b) All operating expenses, to wit: rent, light and heat, taxes, insurance, interest, legal and professional expenses, repairs, advertising, bank charges, and other miscellaneous operating expenses.

NINTH: The value of the cafeteria together with the good will, is hereby fixed between the partners at Fifteen Thousand ($15,000.00) Dollars.

TENTH: Each of the parties hereto agree, in the event of loss during the period of any three (3) months, to contribute his or her proportionate percentage, in the same proportion as above enumerated, anent, the drawings, such contributions to
234 the losses to be either in cash or by means of deductions from the respective drawings of each.

ELEVENTH: The good will of the cafeteria, as well as the name and all the fixtures and equipment; are to remain the sole and exclusive property of LOUIS LOIZIDES, upon the expiration of this contract, unless each of the other partners pays to LOUIS LOIZIDES his or her proportionate percentage of the assets as the valuation set forth (Fifteen

Thousand ($15,000.00) Dollars), unless the business shows a loss by the end of the term of this contract, in which event the total loss shall be deducted from said Fifteen Thousand ($15,000.00) Dollars, in case the partners desire to exercise the option contained in this paragraph.

TWELFTH: The partners shall contribute in the proportions above referred to any additional capital that they may deem necessary for protecting or furthering the interests of the partnership.

THIRTEENTH: If any partner shall, with the written consent of the other partners, advance any monies to the partnership in excess of his contribution to the capital, the amount of such advance shall not be an increase of the capital of such partner or entitle him to any increase in his share of the profits, but the amounts of such advance shall be a debt due to such partner by the partnership and shall bear interest at the rate of six (6%) per cent per annum. Any such advance, with the accrued interest, shall be repaid by the partnership within thirty (30) days after the partnership shall have elected by notice in writing to repay the same or such partner shall have by notice in writing elected to demand the repayment thereof; in no event, however, shall the election of either the partnership or the particular partner be later than a month before the expiration of this agreement or any extension or renewal thereof. 236 237

FOURTEENTH: The account of the partnership shall be maintained under the name of LOUIS LOIZIDES, in such bank or banks as the partners from time to time shall elect and may by a majority vote elect that the checks drawn thereon, shall

238 *Plaintiff's Exhibit 1.*

be signed by one other partner in addition to LOUIS LOIZIDES.

FIFTEENTH: Any partner may withdraw his share of the net profits at the end of each or any fiscal year and if a partner shall not withdraw the whole or any part of his share of the net profits, he shall not be entitled to any interest upon any of his profits not withdrawn, nor shall any such profits be deemed an increase of the capital stock or entitle him to an increased percentage of his profits.

239 SIXTEENTH: Proper books of account shall be kept at all times and shall always be open to inspection of any of the partners hereto, and each partner shall enter or cause to be entered therein a full and accurate account of all his transactions in behalf of the partnership.

SEVENTEENTH: All books of the partnership shall be kept at the place of business of the partnership and each partner shall have immediate and unstinted access thereto at all times.

EIGHTEENTH: Each partner shall at all times pay and satisfy his own personal debts; devote all his time and attention to the business of the part-
240 nership; inform the other partners of all transactions in behalf of the partnership; may not assign or mortgage his share in the partnership or any part thereof or enter into any agreement, as a result of which any person, firm or corporation shall become interested with him therein.

NINETEENTH: None of the partners shall execute any notes in the name of the partnership unless by vote of five (5) of the partners, which vote shall be recorded in any of the books of the partnership and signed by said five (5).

TWENTIETH: Any partner who shall violate any of the terms, provisions and conditions of this agreement shall keep harmless the partnership property and shall also indemnify the other partners from any and all claims, demands and actions which may arise out of or by reason of any such violation of any of the terms, provisions or conditions thereof.

TWENTY-FIRST: If any partner shall be guilty of misconduct of such a character as to render it impracticable for the partners to carry on the partnership business, the offending partner may be expelled from the partnership upon the vote of a majority of the partners, and upon his expulsion he is to be paid one-half (½) of the share of the net profits received by him during the preceding six (6) months, as well as the amount of the expelled partner's share of the capital in the partnership, less his proportionate share of losses, if any. 242

TWENTY-SECOND: At the termination of the partnership, by the extension of its term or by reason of any other cause, a full and accurate inventory shall be prepared and the assets, liabilities and income, gross and net, shall be ascertained, and in pursuance of the provisions above outlined, the assets then remaining shall be divided into proportion as above enumerated, and in accordance with all the terms, conditions and provisos above referred to. 243

TWENTY-THIRD: If any dispute shall arise between the partners herein and they agree to arbitrate same, each partner appointing one arbitrator, and the majority of the arbitrators shall have

244 *Plaintiffs' Exhibit 1.*

the right to decide, and the right to appeal from the decision of said arbitrators, to any Court or any other body, is hereby expressly waived.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

JAMES LOIZIDES
STELLA BELLAS
MARIE YORWICK
NICK ROUSSOS
245 LOUIS LOIZIDES
KALLIS CONSTANTINON
ELIAS TSAKIRES
CHRIST LYMBOURIS
ANGELO CONSTANTINE

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:
CITY OF NEW YORK)

On this 22nd day of April, 1939, before me personally appeared ELIAS TSAKIRES, KALLAS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARY YORWICK, JAMES LOIZIDES and LOUIS LOIZIDES, to
246 me known and known to me to be the individuals described in and who executed the foregoing agreement, and they thereupon duly acknowledged to me that they executed the same.

JOHN CANARAS
John Canaras
Notary Public, Bronx County
(Seal) Bronx County Clerk No. 162
New York County Clerk's No. 1072
Commission expires March 30, 1940

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Plaintiffs' Exhibit 2.

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:
CITY OF NEW YORK

The undersigned do hereby certify that they now conduct or transact business under the name and style of THE COSMO CAFETERIA, at 726 East Tremont Avenue, Borough of Bronx, City of New York and do further certify that the true or real full names of the persons conducting the said business, with the residence and business address and the age of any who may be infants, are as follows:

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Name	*Residence*	*Business Address*
ELIAS TSAKIRES	1348 St. Nicholas Ave. N. Y.	726 E. Tremont Ave. Bx.
KALLIS CONSTANTINON	2067 Mohegan Ave. Bronx.	726 E. Tremont Ave. Bx.
CHRIST LYMBOURIS	630 E. 176th St. Bronx	726 E. Tremont Ave. Bx.
ANGELO CONSTANTINE	1348 St. Nicholas Ave. N. Y.	726 E. Tremont Ave. Bx.
NICHOLAS RUSSOS'	2231 Southern Blvd. Bronx	726 E. Tremont Ave. Bx.
STELLA BELLAS	510 W. 143rd St. N. Y. C.	726 E. Tremont Ave. Bx.
MARIE YORWICK	303 East 53rd St. N. Y. C.	726 E. Tremont Ave. Bx.
JAMES LOIZIDES	751 East 178th St. Bronx	726 E. Tremont Ave. Bx.
LOUIS LOIZIDES	2104 Crotona Pkway. Bronx	726 E. Tremont Ave. Bx.

IN WITNESS WHEREOF we have this 22nd day of April, 1939, made and signed the certificate.

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ELIAS TSAKIRES
KALLIS CONSTANTINON
CHRIST LYMBOURIS
ANGELO CONSTANTINE
NICHOLAS RUSSOS
STELLA BELLAS
MARIE YORWICK
JAMES LOIZIDES
LOUIS LOIZIDES

250 *Plaintiffs' Exhibit 2.*

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:
CITY OF NEW YORK }

On this 22nd day of April, 1939, before me personally appeared ELIAS TSAKIRES, KALLIS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARIE YORWICK, JAMES LOIZIDES and LOUIS LOIZIDES, to me known and known to me to be the individuals described in and who executed the foregoing certificate and they thereupon duly acknowledged to me that they executed the same.

251

JOHN CANARAS
Notary Public, B'x Co.
B'x Co. Cl. #162
N. Y. Co. Cl. #1072
Com. exp. March 30, 1940

No. 35015

STATE OF NEW YORK, }
COUNTY OF BRONX, } ss.:

I, MICHAEL B. MCHUGH, Clerk of the said County and Clerk of the Supreme Court of said State for said County, and Clerk of the County Court for said County, DO CERTIFY, That I have
252 compared the preceding with the original

Certificate of conducting business
under an assumed name

on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original.

Indorsed Filed April 26, 1939.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 19 day of May, 1939.

MICHAEL B. MCHUGH
Clerk.

(Seal)

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Plaintiffs' Exhibit 3.

THIS AGREEMENT between Bee Realty Corp., a domestic corporation, 1953 Clinton Avenue, Bronx, New York, as Landlord, and Louis Loizides, residing at 2104 Crotona Parkway, Bronx, New York, as Tenant

Witnesseth: That the said Landlord has let unto the said Tenant and the said Tenant has hired from the said Landlord the corner store and store on Clinton Avenue now occupied by Chinese hand laundry and the use of the basement thereunder of premises known as 1953 Clinton Avenue, Bronx, New York for the term of Eight (8) Years 254
from August 1st, 1936 to July 31st, 1944 to be used and occupied only for a restaurant and cafeteria upon the conditions and covenants following:

1st. That the Tenant shall pay an annual rent of Thirty-One Hundred and Twenty Dollars ($3120.) for the period from August 1st, 1936 to July 31st, 1938, payable in equal monthly installments of Two Hundred and Sixty Dollars ($260.) each on the first day of each and every month; An annual rent of Thirty-Three Hundred Dollars ($3300.) for the period from August 1st, 1938 to July 31st, 1940, payable in equal monthly installments of Two Hundred and Seventy-Five Dollars 255
($275.) each on the first day of each and every month; An annual rent of Thirty-Six Hundred Dollars ($3600.), payable in equal monthly installments of Three Hundred Dollars ($300.) each on the first day of each and every month for the period from August 1st, 1940 to July 31st, 1942 and an annual rent of Thirty-Nine Hundred Dollars ($3900.) payable in equal monthly installments of Three Hundred and Twenty-Five Dol-

lars ($325.) each on the first day of each and every month for the period from August 1st, 1942 to July 31st, 1944.

2ND. That the tenant shall take good care of the premises and shall, at his own cost and expense make all repairs, except structural, and to water pipes and steam pipes and at the end or other expiration of the term, shall deliver up the demised premises in good order or condition, damages by the elements excepted.

257 3RD. That the Tenant shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and City Government and of any and all their Departments and Bureaus applicable to said premises, for the correction, prevention, and abatement of nuisances or other grievances, in, upon, or connected with said premises during said term; and shall also promptly comply with and execute all rules, orders and regulations of the New York Board of Fire Underwriters for the prevention of fires at his own cost and expense.

4TH. That the Tenant, successors, heirs, executors or administrators shall not assign this agree-
258 ment, or underlet or underlease the premises, or any part thereof, or make any alterations on the premises, without the Landlord's consent in writing; or occupy, or permit or suffer the same to be occupied for any business or purpose deemed disreputable or extra-hazardous on account of fire, under the penalty of damages and forfeiture, and in the event of a breach thereof, the term herein shall immediately cease and determine at the

option of the Landlord as if it were the expiration of the original term.

5TH. That the Tenant shall, in case of fire, give immediate notice thereof to the Landlord, who shall thereupon cause the damage to be repaired with reasonable speed; but if the premises be so damaged that the Landlord shall decide to rebuild, the term shall cease and the accrued rent be paid up to the time of the fire.

6TH. The said Tenant agrees that the said Landlord and its Agents, and other representatives, shall have the right to enter into and upon 260
said premises, or any part thereof, at all reasonable hours for the purpose of examining the same, or making such repairs or alterations therein as may be necessary for the safety and preservation thereof.

7TH. The Tenant also agrees to permit the Landlord or its Agents to show the premises to persons wishing to hire or purchase the same; and the Tenant further agrees that on and after May 1st, 1944 next preceding the expiration of the term hereby granted, the Landlord or its Agents shall have the right to place notices on the front of said premises, or any part thereof, offering the prem- 261
ises "To Let" or "For Sale," and the Tenant hereby agrees to permit the same to remain thereon without hindrance or molestation.

8TH. That if the said premises, or any part thereof shall be deserted or become vacant during said term, or if any default be made in the payment of the said rent or any part thereof, or if any default be made in the performance of any of the covenants herein contained, the Landlord or repre-

262 *Plaintiffs' Exhibit 3.*

sentatives may re-enter the said premises by force, summary proceedings or otherwise, and remove all persons therefrom, without being liable to prosecution therefor, and the Tenant hereby expressly waives the service of any notice in writing of intention to re-enter, and the Tenant shall pay at the same time as the rent becomes payable under the terms hereof a sum equivalent to the rent reserved herein, and the Landlord may rent the premises on behalf of the Tenant, reserving the right to rent the premises for a longer period of time than fixed in the original lease without re-
263 leasing the original Tenant from any liability, applying any moneys collected, first to the expense of resuming or obtaining possession, second to restoring the premises to a rentable condition, and then to the payment of the rent and all other charges due and to grow due to the Landlord, any surplus to be paid to the Tenant, who shall remain liable for any deficiency.

9TH. That in case of any damage or injury occurring to the glass or damage and injury to the said premises of any kind whatsoever, said damage or injury being caused by the carelessness, negligence, or improper conduct on the part of the said Tenant, his Agents or Employees, then the
264 said Tenant shall cause the said damage or injury to be repaired as speedily as possible at his own cost and expense.

10TH. That the Tenant shall neither encumber nor obstruct the sidewalk in front of, entrance to, or halls and stairs of said building, nor allow the same to be obstructed or encumbered in any manner.

11TH. The Tenant shall neither place, or cause, or allow to be placed, any sign or signs of any kind whatsoever at, in or about the entrance to said premises or any other part of same, except in or at such place or places as may be indicated by the Landlord and consented to by it in writing. And in case the Landlord or its representatives shall deem it necessary to remove any such sign or signs in order to paint the said premises or make any other repairs, alterations or improvements in or upon said premises or any part thereof, it shall have the right to do so, providing it cause the same to be removed and replaced at its own expense, whenever the said repairs, alterations or improvements shall have been completed.

12TH. That the Landlord is exempt from any and all liability for any damage or injury to person or property caused by or resulting from steam, electricity, gas, water, rain, ice or snow, or any leak or flow from or into any part of said building or from any damage or injury resulting or arising from any other cause or happening whatsoever and whether or not said damage or injury be caused by or due to the negligence of the Landlord or the Landlord's agent, servants, employees or other tenants.

13TH. That if default be made in any of the covenants herein contained, then it shall be lawful for the said Landlord to re-enter the said premises, and the same to have again, re-possess and enjoy. The said Tenant hereby expressly waives the service of any notice in writing of intention to re-enter, as provided for in 998 of the Civil Practice Act, or by any law of the State of New York.

268 *Plaintiffs' Exhibit 3.*

14TH. That this instrument shall not be a lien against said premises in respect to any mortgages that are now on or that hereafter may be placed against said premises, and that the recording of such mortgage or mortgages shall have preference and precedence and be superior and prior in lien of this lease, irrespective of the date of recording and the Tenant agrees to execute any such instrument without cost, which may be deemed necessary or desirable to further effect the subordination of this lease to any such mortgage or mortgages, and a refusal to execute such instruments shall entitle
269 the Landlord, its assigns and legal representatives to the option of cancelling this lease without incurring any expense or damage and the term hereby granted is expressly limited accordingly.

15TH. The Tenant has this day deposited with the Landlord the sum of Five Hundred and Twenty Dollars ($520.) as security for the full and faithful performance of and compliance with all the terms and conditions of this lease upon the Tenant's part to be performed, which said security shall not be regarded as trust funds, the relationship between the Landlord and the Tenant being that of debtor and creditor only, and the said sum shall be returned to the Tenant after the time fixed
270 as the expiration of the term herein, provided the Tenant has fully and faithfully carried out all of the terms, covenants and conditions on the Tenant's part to be performed, and it is hereby understood and agreed that if the Landlord shall sell or transfer the premises covered by the within lease and assign or transfer the within lease to the new landlord, the Tenant hereby expressly agrees that the Landlord may transfer, assign and turn over

the security deposited under this lease, to the new landlord, and the Tenant hereby releases and relieves the Landlord herein from any and all personal liability for the return of the said security and the Tenant agrees to look to the new landlord solely for the return of the said security, and it is agreed that this shall apply to every transfer or assignment made of the security to a new landlord.

16TH. That the security deposited under this lease shall not be mortgaged, assigned or encumbered by the Tenant without the written consent of the Landlord, same, however, to bear interest at the rate of 4% per annum, payable annually.

17TH. It is expressly understood and agreed that in case the demised premises shall be deserted or vacated, or if default be made in the payment of the rent or any part thereof as herein specified, or if, without the consent of the Landlord, the Tenant shall sell, assign, or mortgage this lease or if default be made in the performance of any of the covenants and agreements in this lease contained on the part of the Tenant to be kept performed, or if the Tenant shall fail to comply with any of the statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and City Government or of any and all their Departments and Bureaus applicable to said premises, or hereafter established as herein provided, or if the Tenant shall file a petition in bankruptcy or be adjudicated a bankrupt or make an assignment for the benefit of creditors or take advantage of any insolvency act, the Landlord may, if it so elect, at any time thereafter terminate this lease and the term hereof, on giving to the Tenant five days' notice in writing of its intention so to do, and this

lease and the term thereof shall expire and come to an end on the date fixed in such notice as if said date were the date originally fixed in this lease for the expiration thereof. Such notice may be given by mail to the Tenant addressed to the demised premises.

18TH. The Tenant shall pay to the Landlord the rent or charge, which may, during the demised term, be assessed or imposed for the water used or consumed in or on the said premises, whether determined by meter or otherwise, as soon as and
275 when the same way be assessed or imposed, and will also pay the expenses for the setting of a water meter in the said premises should the latter be required. If such rent or charge or expenses are not so paid the same shall be added to the next month's rent thereafter to become due. The landlord, however, to pay the cost, if any, for the meter itself.

19TH. That the Tenant will not nor permit undertenants to do anything in said premises, or bring anything into said premises, or permit anything to be brought into said premises or to be kept therein, which will in any way increase the
276 rate of fire insurance on said demised premises, nor use the demised premises or any part thereof, nor suffer or permit their use for any business or purpose which would cause an increase in the rate of fire insurance on said building, and the Tenant agrees to pay on demand any such increase.

20TH. The failure of the Landlord to insist upon a strict performance of any of the terms, conditions and covenants herein, shall not be

deemed a waiver of any rights or remedies that the Landlord may have, and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

21ST. That should the land whereon said building stand or any part thereof be condemned for public use, then in that event, upon the taking of the same for such public use, this lease, at the option of the Landlord, shall become null and void, and the term cease and come to an end, anything herein contained to the contrary notwithstanding.

22ND. If after default in payment of rent or 278
violation of any other provision of this lease, or upon the expiration of this lease, the Tenant moves out or is dispossessed and fails to remove any trade fixtures or other property prior to such said default, removal, expiration of lease, or prior to the issuance of the final order or execution of the warrant, then and in that event, the said fixtures and property shall be deemed abandoned by the said Tenant and shall become the property of the Landlord.

23RD. In the event that the relation of the Landlord and Tenant may cease or terminate by reason of the re-entry of the Landlord under the terms 279
and covenants contained in this lease or by the ejectment of the Tenant by summary proceedings or otherwise, or after the abandonment of the premises by the Tenant, it is hereby agreed that the Tenant shall remain liable and shall pay in monthly payments the rent which accrues subsequent to the re-entry by the Landlord, and the Tenant expressly agrees to pay as damages for the breach of the covenants herein contained, the dif-

ference between the rent reserved and the rent collected and received, if any, by the Landlord during the remainder of the unexpired term, such difference or deficiency between the rent herein reserved and the rent collected, if any, shall become due and payable in monthly payments during the remainder of the unexpired term, as the amounts of such difference or deficiency shall from time to time be ascertained; and the Tenant waives and will waive all right to trial by jury in any summary proceedings hereafter instituted by the Landlord against the Tenant in respect to the
281 demised premises or in any action brought to recover rent or damages hereunder.

24TH. The Tenant waives all rights to redeem under §1437 of the Civil Practice Act.

25TH. The tenant shall obtain, pay for and deliver to the landlord a proper plate glass insurance policy insuring all the plate glass contained in the premises herein demised. In the event that the tenant shall fail to provide such insurance policy, the landlord may and hereby is authorized to obtain such insurance and the tenant agrees to pay for the same when demanded by the landlord in accordance with the schedule rendered by the
282 insurance company and if unpaid, such insurance cost may be added to the monthly rent next to become due and shall be collected as additional rent.

26TH. As a consideration of the granting of this lease, the Tenant agrees to install and complete at a date no later than September 1st, 1936 a new store front in accordance with the plans and specifications to be supplied by the Tenant and approved by the Landlord in writing prior to the

starting of such installation. Releases and paid receipts from the contractor or contractors doing the work on the above store front and in the store for the Tenant are to be given to the Landlord upon completion of the work. All City, State and Governmental permits pertaining to the above alteration are to be obtained and paid for by the Tenant and further all of the above work is to be covered by a completion bond in the sum of Fifteen Hundred Dollars ($1500.) supplied and paid for by the Tenant in favor of the Landlord.

27TH. It is understood that the Tenant shall remove at his own cost and expense all snow and ice from the sidewalk in front of the premises hereby leased within four hours after snow shall cease to fall or ice shall have formed. 284

28TH. The Tenant may erect trade signs on the demised premises made of metal and neon as approved by the landlord in writing.

29TH. All artificial light and gas is to be at the expense of the Tenant and it is understood and agreed that the Tenant is to furnish and install and it is understood and agreed that the Tenant is to furnish and install at his own cost and expense all electrical and gas fixtures and is to pay for all the electricity and gas consumed by him on the demised premises. 285

30TH. The landlord will furnish to the Tenant without additional charge, steam heat during the winter months during the day time and allow to keep the said heat up at his own expense during the Tenant access to the boiler and permit him to

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the times that the Landlord does not usually supply same. It is further understood and agreed that in case it shall become necessary or proper at any time, from accident, or for improving the condition or operation of the heating apparatus, plumbing, boilers, machinery, electric plant, or anything appertaining thereto, to omit the operating of said light or heating apparatus or other service, until all necessary repairs or improvements shall have been made and completed, the party of the first part shall be at liberty to do the same without in any manner or respect affecting
287 or modifying the obligations of the said Tenant herein contained, or rendering itself liable for any damage or offset by reason thereof.

31ST. The Landlord agrees to supply the tenant with hot water as normally supplied to tenants of apartments.

32ND. The Landlord agrees not to lease as a restaurant or cafeteria any store owned by it in said premises so long as this lease be in full force and effect.

And the said Landlord doth covenant that the said Tenant on paying the said yearly rent, and
288 performing the covenants aforesaid, shall and may peacefully and quietly have, hold and enjoy the said demised premises for the term aforesaid, provided, however, that this covenant shall be conditioned upon the retention of title to the premises by the Landlord.

AND IT IS MUTUALLY UNDERSTOOD AND AGREED that the covenants and agreements contained in the within lease shall be binding upon the parties

hereto and upon their respective successors, heirs, executors and administrators.

IN WITNESS WHEREOF, the parties have interchangeably set their hands and seals (or caused these presents to be signed by their proper corporate officers and caused their proper corporate seal to be hereto affixed) this 8th day of May, 1936.

Signed, sealed and delivered
in the presence of

BEE REALTY CORP.,
By BENJAMIN BIRNBAUM L. S. 290
(Seal) Treas.
Landlord.

LOUIS LOIZIDES L. S.
Tenant.

STATE OF NEW YORK, }
COUNTY OF BRONX, } ss.:

On the 13th day of May, 1936, before me personally came LOUIS LOIZIDES, to me known and known to me to be the individual described in, and who executed, the foregoing instrument, and acknowledged to me that he executed the same. 291

MAX RUBIN
(Seal) Notary Public
Bronx Co. Clerk's No. 145, Reg. No. 145R37
Commission Expires March 30, 1937
Certificate filed Register's Office
Bronx County

292 *Plaintiffs' Exhibit 3.*

STATE OF NEW YORK, }
COUNTY OF BRONX, } ss.:

On the 13th day of May, 1936, before me personally came BENJAMIN BIRNBAUM, to me known, who, being by me duly sworn, did depose and say that he resides at 1953 Clinton Ave., the Borough of the Bronx, City of New York; that he is the Treasurer of Bee Realty Corp., the corporation mentioned in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is
293 such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

MAX RUBIN
(Seal) Notary Public
Bronx Co. Clerk's No. 145, Reg. No. 145R37
Commission Expires March 30, 1937
Certificate filed Register's Office
Bronx County

Defendants' Exhibit A for Identification.

294 Promissory note signed by Tsakires to Loizides.

(Omitted pursuant to stipulation at page 100.)

295

Statement as to Evidence.

The foregoing case contains all of the evidence adduced and proceedings had upon the trial herein, together with the exceptions of both sides taken on said trial.

Affidavit of No Opinion.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

IRVING R. FEINBERG, being duly sworn, says: 296

That he is an attorney associated with Boudin, Cohn & Glickstein, the attorneys for the defendants-appellants in this action, and is familiar with the same. That no opinion in writing was rendered herein by the Justice who presided at the trial of this action.

IRVING R. FEINBERG.

Sworn to before me this
15th day of January, 1942.

JEAN TAYLOR,
Notary Public,
Bronx County. 297
Certificate filed in New York County.
Comm. expires March 30, 1943.

298

Stipulation as to Defendants' Exhibit A.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

ELIAS TSAKIRES, KALLIS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARY YORWICK, JAMES LOIZIDES and LOUIS LOIZIDES, co-partners trading under the name of THE COSMOS CAFETERIA,
Plaintiffs,

299 against

WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES UNION, LOCAL, 302, an unincorporated association having more than seven members, individually and as President of said union,
Defendants.

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties hereto, that Defendant's Exhibit A consists of a promissory note dated April 2nd, 1939, in the sum of Fifteen Hundred ($1500.00) Dollars, made by Elias Tsakires, as maker, to Louis Loizides, as
300 payee, due April 2nd, 1940.

Dated: New York, N. Y., January 17, 1942.

DAVID L. DELMAN,
Attorney for Plaintiffs.

BOUDIN, COHN & GLICKSTEIN,
Attorneys for Defendants.

301

Stipulation Settling Case.

It is hereby stipulated that the foregoing record contains all the evidence given upon the trial of this action, together with the exceptions of both sides taken on said trial, and that the same be settled and ordered on file as the case on appeal and annexed to the judgment roll herein.

Dated, New York, January 17, 1942.

Boudin, Cohn & Glicksteis,
Attorneys for Defendants-Appellants.

David L. Delman, 302
Attorney for Plaintiffs-Respondents.

Order Settling Case.

On the above stipulation, I hereby certify that the foregoing record contains all the evidence given on the trial of this action, together with the exceptions of both sides taken on said trial and the said record is hereby settled and ordered on file as the case on appeal in this action.

Dated, New York, January 19, 1942.

303

Timothy A. Leary,
J. S. C.

304

Stipulation Waiving Certification.

Pursuant to Section 170 of the Civil Practice Act,

IT IS HEREBY STIPULATED that the foregoing consists of true and correct copies of the notice of appeal, judgment roll, and case and exceptions as settled, and of the whole thereof, now on file in the office of the Clerk of the County of Bronx, and that certification thereof by the Clerk of said County, pursuant to Section 616, is hereby waived.

Dated, New York, January 17, 1942.

305

BOUDIN, COHN & GLICKSTEIN,
Attorneys for Defendants-Appellants.

DAVID L. DELMAN,
Attorney for Plaintiffs-Respondents.

Order Filing Record in Appellate Division.

Purusant to Section 616 of the Civil Practice Act, it is

ORDERED that the foregoing printed record be
306 filed in the office of the Clerk of the Appellate Division of the Supreme Court in the First Department.

Dated, New York, January 19, 1942.

TIMOTHY A. LEARY,
J. S. C.

307

Notice of Appeal to Court of Appeals.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

ELIAS TSAKIRES, KALLIS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARY YORWICK, JAMES LOIZIDES and LOUIS LOIZIDES, co-partners trading under the name of the COSMOS CAFETERIA,

Plaintiffs,

308

against

WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES UNION, LOCAL 302, an unincorporated association having more than seven members, individually and as president of said union,

Defendants.

Sirs:

PLEASE TAKE NOTICE that the defendant William Mesevich, President of the Cafeteria ~~Employees~~ Union Local 302, hereby appeals to the Court of Appeals of the State of New York from the judgment dated the 17th day of April, 1942, and entered in the office of the Clerk of the County of Bronx on the said date, which judgment was entered upon an order of the Appellate Division of the Supreme Court dated the 10th day of April, 1942, and entered in the office of the Clerk of said Court on said date, affirming, two Justices dissenting, the judgment entered in the office of the Clerk of the County of Bronx on the 20th day of Sep- 309

310 *Notice of Appeal to Court of Appeals.*

tember, 1939; and that this appeal is taken from the whole of said judgment and order and from each and every part thereof.

PLEASE TAKE FURTHER NOTICE that the appeal is taken upon the following ground, among others:

That said judgment and order are violative of the Constitution of the United States, particularly Amendments I, V and XIV thereof, and the Constitution of the State of New York, particularly Article I, Section 8, thereof.

311 Dated, April 22, 1942.

Yours, etc.,

BOUDIN, COHN & GLICKSTEIN,
Attorneys for Defendant,
20 West 43rd Street,
Borough of Manhattan,
City of New York.

To:

MICHAEL B. MCHUGH,
Clerk of County of Bronx.

DAVID L. DELMAN, Esq.,
312 Attorney for Plaintiffs,
261 Broadway,
Borough of Manhattan,
City of New York.

313

Order of Affirmance.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 10th day of April, 1942.

Present—Hon. Francis Martin,
Presiding Justice.
" Alfred H. Townley,
" Edward S. Dore,
" Albert Cohn,
" Joseph M. Callahan,
Justices.

314

Elias Tsakires, Kallis Constantinon, Christ Lymbouris, Angelo Constantine, Nicholas Russos, Stella Bellas, Mary Yorwick (etc. et al), Respondents, against William Mesevich, etc., Appellants.	11536

An appeal having been taken to this Court by the defendants from a judgment of the Supreme Court, Bronx County, entered on the 20th day of September, 1939, and said appeal having been argued by Mr. Irving Robert Feinberg, of counsel for the appellants, and by Mr. David L. Delman, of counsel for the respondents; and due deliberation having been had thereon,

315

It is ordered and adjudged that the judgment so appealed from be and the same is hereby, in all

316 *Order of Affirmance.*

things, affirmed; and that the respondents recover of the appellants the costs of this appeal. Two of the Justices dissent and vote to reverse and dismiss the complaint.

Enter,

F. M.,

Judgment of Affirmance.

SUPREME COURT

317 OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

ELIAS TSAKIRES, KALLIS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARY YORWICK, JAMES LOIZIDES and LOUIS LOIZIDES, co-partners trading under the name of the COSMOS CAFETERIA, Plaintiffs.	Plaintiff's Address 726 E. Tremont Ave. Bronx, New York
against	
WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES UNION, LOCAL 302, an unincorporated association having more than seven members, individually and as president of said union, Defendants.	Defendant's Address 701 Eighth Avenue New York City

318

The defendants having appealed to the Appellate Division from a judgment in favor of the plaintiffs, enjoining the defendants permanently from picketing the defendant's place of business and the Appellate Division, by its order, dated

April 10, 1942, having affirmed the judgment together with costs and disbursements and the costs having been taxed at $76.47, it is

On motion of David L. Delman, attorney for the plaintiffs,

ORDERED, that the plaintiffs, Elias Tsakires, Kallis Constantinon, Christ Lymbouris, Angelo Constantine, Nicholas Russos, Stella Bellas, Mary Yorwick, James Loizides and Louis Loizides, co-partners trading under the name of the Cosmos Cafeteria, have judgment against the defendant in 320
the sum of $76.47, and the plaintiffs have execution therefor.

MICHAEL B. McHUGH,
Clerk.

Dated April 17, 1942.

Memorandum Opinion of Appellate Division.

(N. Y. Law Journal, April 11, 1942.)

By MARTIN, P.J.; TOWNLEY, DORE, COHN and CALLAHAN, JJ.

321

11536. Tsakires et al., res. v. Mesevich etc., ap.—Judgment affirmed with costs. No opinion. (Dore and Callahan, JJ., dissent and vote to reverse and dismiss the complaint, on the ground that the alleged partnerships among the plaintiffs are not bona fide. The testimony clearly indicates that the relationship of employer and employee continued to exist among these parties.) Order filed.

322

Affidavit of No Opinion by Appellate Division.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

IRVING R. FEINBERG, being duly sworn, deposes and says that he is an attorney associated with Boudin, Cohn & Glickstein, the attorneys for the defendant-appellant in this action; that no opinion was rendered by the Appellate Division of the Supreme Court for the First Department in affirming the judgment appealed from herein, except the memorandum printed hereinabove.

323 IRVING R. FEINBERG.

Sworn to before me this
day of June, 1942.

JEAN TAYLOR,
Notary Public,
New York County.
Commission expires March 30, 1944.

324

325

Stipulation Waiving Certification in Court of Appeals.

Pursuant to Section 170 of the Civil Practice Act, it is hereby stipulated that the foregoing consists of true and correct copies of the record on appeal to the Appellate Division, the notice of appeal to the Court of Appeals, the order of affirmance, the judgment of affirmance, and the memorandum of the Appellate Division of the Supreme Court for the First Department, and the whole thereof, now on file in the office of the Clerk of the County of Bronx; and certification thereof, pursuant to Section 616 of the Civil Practice Act, is hereby waived. 326

Dated, New York, June , 1942.

BOUDIN, COHN & GLICKSTEIN,
Attorneys for Defendant-Appellant.

DAVID L. DELMAN,
Attorney for Plaintiffs-Respondents.

327

331

Remittitur.

COURT OF APPEALS

STATE OF NEW YORK, ss.:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 21st day of January, in the year of our Lord one thousand nine hundred and forty-three, before the Judges of said Court.

Witness,
The Honorable IRVING LEHMAN,
Chief Justice, Presiding.
John Ludden, Clerk.

332

Remittitur January 21, 1943

ELIAS TSAKIRES and ors.,
co-partners tc.,
Respondents,

against

WILLIAM MESEVICH, President of the Cafeteria Employees Union Local 302, an unincorporated association tc.,
Appellant.

333

BE IT REMEMBERED, That on the 27th day of June in the year of our Lord one thousand nine hundred and forty-two William Mesevich, President of Cafeteria Employees Union Local 302, tc., the appellant in this cause, came here unto the Court of Appeals, by Boudin, Cohn and Glick-

stein, his attorneys, and filed in the said Court a Notice of Appeal and return thereto from the judgment and order of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Elias Tsakires and ors., copartners, tc., the respondents in said cause, afterwards appeared in said Court of Appeals by David L. Delman, their attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

335 Whereupon, The said Court of Appeals having heard this cause argued by Mr. Louis B. Boudin of counsel for the appellant, and submitted by counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, with costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judg-
336 ment be affirmed with costs as aforesaid.

And hereupon, as well the Notice of Appeal, and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and

provided, to be enforced according to law, and which record now remains in the said Supreme Court before the Justices thereof, etc.

JOHN LUDDEN
Clerk of the Court of Appeals
of the State of New York

COURT OF APPEALS, CLERK'S OFFICE
Albany, January 21, 1943.

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of 338
Appeals, with the papers originally filed therein, attached thereto.

JOHN LUDDEN
(Seal) Clerk

No. 74381

STATE OF NEW YORK, }
COUNTY OF BRONX, } ss.:

I, MICHAEL B. McHUGH, Clerk of the said County and Clerk of the Supreme Court of said State for said County, and Clerk of the County Court for said County, DO CERTIFY, That I have compared the preceding with the original Remittitur of Court of Appeals on file in my office, and 339
that the same is a correct transcript therefrom, and of the whole of such original.

Indorsed Filed Feb. 18, 1943

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 26 day of Feb,, 1943.

MICHAEL B. McHUGH
(Seal) Clerk.

340

Clerk's Certificate.

No. 52

STATE OF NEW YORK, }
COUNTY OF BRONX, } ss.:

ELIAS TSAKIRES and ors., Co-partners, etc.,
Respondents,
against
WILLIAM MESEVICH, Pres. of the Cafeteria Employees Union, etc.,
Appellants.

341 I, MICHAEL B. McHUGH, Clerk of the Supreme Court in and for said County, and Clerk of the Supreme Court of said State, and Clerk of the County Court, County of Bronx, do hereby certify that the foregoing consists of certified copies of the Notice of Appeal, Judgment Roll, Record on appeal and the remittitur dated January 21st, 1943 of the Court of Appeals, State of New York, on file in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this 17th day of March, A. D. 1943.

(Seal)

342 MICHAEL B. McHUGH
Clerk.

343

Certificate as to Opinion.

STATE OF NEW YORK
COURT OF APPEALS,
STATE REPORTER'S OFFICE } ss.:

I, E. J. DIMOCK, Reporter of the Court of Appeals of the State of New York, do hereby certify that I have compared the annexed copy of opinion in the case of Tsakires v. Mesevich, decided by the Court of Appeals on the twenty-first day of January, 1943, with the official opinion rendered in such case, and I further certify that the same is a true and correct copy of said opinion and of each and every part thereof.

344

IN WITNESS WHEREOF, I have hereunto affixed my signature as Reporter of the Court of Appeals, at the City of Albany, in the State of New York, this eighth day of March, 1943.

(Seal)

E. J. DIMOCK
As Reporter of the Court of Appeals of the State of New York.

Attest:

L. S. JOHN LUDDEN
Clerk of the Court of Appeals.

345

STATE OF NEW YORK
COURT OF APPEALS. }

I, IRVING LEHMAN, Chief Judge of the Court of Appeals of the State of New York, the highest Appellate Court and Court of Record in and for said State, do hereby certify that John Ludden

is the clerk of said court, having custody of the seal of said court and of the decisions, minutes and records thereof, and that E. J. Dimock is the official reporter of said court, having custody of the official opinions, written and handed down by said court and the members thereof, and of the official publication and reports thereof; and I further certify that the attestation and authentication, by said clerk and said reporter of the annexed copy of the official opinion rendered in the case of Tsakires v. Mesevich, decided by the said Court of Appeals on the 21st day of Janu-
347 ary, 1943, is in due form and sufficient under the laws of the State of New York and the rules and practice of the said Court of Appeals; that the seal imprinted thereon is the true and genuine seal of the said Court of Appeals, and that the signature of John Ludden, as clerk of said court, appended thereto is the true and genuine signature of said John Ludden, and the signature of E. J. Dimock, as reporter of said court, appended thereto is the true and genuine signature of said E. J. Dimock.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature at the
348 Chambers of said court at the Court of Appeals Hall, in the City of Albany and State of New York on the eighth day of March in the year one thousand nine hundred and forty-three.

IRVING LEHMAN
As Chief Judge of the Court of Appeals of the State of New York.

349

Opinion of Court of Appeals.

ELIAS TSAKIRES et al., Co-partners Trading under the Name of THE COSMO CAFETERIA, Respondents, *v.* WILLIAM MESEVICH, Individually and as President of the CAFETERIA EMPLOYEES UNION, LOCAL 302, Appellants.

(Decided January 21, 1943.)

APPEAL by defendants from a judgment of the Appellate Division, first department, which affirmed by a divided court a decree of the Supreme Court of the County of Bronx (LEARY, J.), granting a permanent injunction.

350

Louis B. Boudin and *Irving R. Feinberg* for appellants.

David L. Delman for respondents.

RIPPEY, J. The controlling facts in this case do not substantially or materially differ from those in the case of *Angelos et al.*, against the same defendants, in which a decision is being handed down herewith. (*Angelos* v. *Meserich*, 289 N. Y. 498.) The unlawful conduct of defendants here found to exist is similarly subject to judicial restraint.

The judgment appealed from should be affirmed, with costs.

351

DESMOND, J. (dissenting). This case is so nearly identical with *Angelos* v. *Meserich*, decided herewith, that it should follow the same course. The judgment should be reversed and the complaint dismissed, with costs.

FINCH, LEWIS and CONWAY, JJ., concur with RIPPEY, J., DESMOND, J., dissents in opinion in which LEHMAN, Ch. J., and LOUGHRAN, J., concur.

Judgment affirmed.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—June 14, 1943

On Petition for Writ of Certiorari to the Court of Appeals of the State of New York

A petition for rehearing having been filed in this case upon the denial of a petition for writ of certiorari;

Upon consideration thereof, it is ordered by this Court that the petition for rehearing be, and the same is hereby, granted.

It is further ordered that the order denying certiorari be, and the same is hereby, vacated; and that the petition for writ of certiorari herein be, and the same is hereby, granted.

It is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM 1942

No. 803

CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH,

Petitioners,

against

GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WAAL, and DEMOSTHENES LOIZIDES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK AND BRIEF IN SUPPORT THEREOF

LOUIS B. BOUDIN,
Of Counsel for Petitioners.

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IN THE

Supreme Court of the United States

OCTOBER TERM 1942

No. .....

CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH,
Petitioners,

against

GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WAAL, and DEMOSTHENES LOIZIDES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioners, Cafeteria Employees Union, Local 302, and William Mesevich, respectfully pray that a *writ of certiorari* issue to review the order of the Court of Appeals of the State of New York, affirming an order of the Appellate Division of the Supreme Court of the State of New York, in and for the First Department, which said last mentioned order affirmed a judgment of the Supreme Court of the State of New York, County of the Bronx, in favor of Gus Angelos and others, as plaintiffs, and against these Petitioners, as defendants, whereby Petitioners were enjoined and restrained from stationing pickets at or near a certain cafeteria or restaurant located at 838 East 180th Street, Borough of the Bronx, City of New York, State of New York.

And in support of their petition, your petitioners respectfully show to this Honorable Court:

A

Statement of the Matter Involved

I. Petitioner Cafeteria Employees Union, Local 302, is a voluntary unincorporated association, and a bona fide labor organization composed of workers in cafeterias in the Borough of Bronx, City of New York, and elsewhere in the said City; and Petitioner William Mesevich is its President.

II. For many years prior to on or about April 14, 1939, Demosthenes Loizides was the owner of a certain cafeteria located at 838 East 180th Street, in the Borough of Bronx, City and State of New York, which said cafeteria was conducted by the said Demosthenes Loizides under the firm name and style of "World Cafeteria", by which name said cafeteria was generally known.

III. Some time prior to April 14, 1939, Petitioner Cafeteria Employees Union, Local 302, requested the said Demosthenes Loizides that he enter into a collective bargaining agreement with it, and that he employ its members as workers in his said cafeteria. Said Demosthenes Loizides refused the said request to employ members of Petitioner Cafeteria Employees Union, Local 302, and refused to enter into any collective bargaining agreement with it covering or concerning the workers which he employed in his said cafeteria. Thereupon, Petitioner Cafeteria Employees Union, Local 302, caused the said cafeteria located at 838 East 180th Street, Borough of Bronx, New York City, to be picketed by one picket. Said picketing commenced on or about the 15th day of April, 1939, and continued until it was enjoined by the Supreme Court of the State of New York, as hereinafter more particularly stated. Said picketing was at all times orderly and peaceful.

IV. Thereafter and on or about May 3, 1939, the said Demosthenes Loizides and six other persons, to wit, Gus Angelos, John Harris, Lucas Harris, Nick Fellougis, Harry Galatis, and Mary Waal, claiming to be copartners and owners of the said cafeteria located at 838 East 180th Street, Borough of the Bronx, City of New York, brought a suit in the Supreme Court of the State of New York, in and for the County of Bronx, against your Petitioners, entitled "Gus Angelos, John Harris, Lucas Harris, Nick Fellougis, Harry Galatis, Mary Waal and Demosthenes Loizides, copartners trading under the name of The World Cafeteria, plaintiffs, against William Mesevich, President of the Cafeteria Employees Union, Local 302, an unincorporated association having more than seven members, individually and as President of said union, defendants", wherein they prayed the said Supreme Court to enjoin and restrain your Petitioners from continuing the said picketing. The said suit came to trial in the said Supreme Court, and was tried therein on the 14th day of June, 1939, and resulted in a judgment or decree which was entered in the said court on or about September 20, 1939, in favor of the plaintiffs therein and against your Petitioners, enjoining and restraining your Petitioners from continuing the said picketing or thereafter conducting any picketing whatsoever at or near the said cafeteria located at 838 East 180th Street, Borough of Bronx, City of New York. The material portion of the said decree was and is in the following language, to wit:

> "ORDERED, ADJUDGED AND DECREED, that the plaintiffs have judgment against the defendants for a permanent injunction restraining them, and the defendants hereby are restrained and enjoined from stationing pickets at or near the plaintiffs' place of business at 838 East 180th Street, Borough of the Bronx, City of New York, and from interfering with the plaintiffs' customers who may seek to enter their place of business, or to prevent by coercion or otherwise any customers of the plaintiffs seeking to enter plaintiffs' place of business, and from interfering in any other wise with the plaintiffs' business."

V. Thereupon, you Petitioners duly appealed from the said judgment or decree to the Appellate Division of the Supreme Court of the State of New York, in and for the First Department. The said appeal was thereafter duly argued in the said Appellate Division; and after such argument the said Appellate Division affirmed the said judgment or decree by a divided court, three members of the said court voting for affirmance and two members of the said court voting for reversal. The order of affirmance of the Appellate Division was entered on or about the 10th day of April, 1942. No opinion was written by the majority of the said court upon such affirmance.

VI. Thereupon your Petitioners duly appealed from the said order of affirmance to the Court of Appeals of the State of New York, which said court is the court of last resort of the State of New York. The said last mentioned appeal came to be heard before the said Court of Appeals and was duly argued herein; and after hearing said argument, the said Court of Appeals made its decision affirming the said judgment or decree by a divided court, four members of the said court voting for affirmance, while three members of the said court voted for reversal. The order of affirmance of the Court of Appeals of the State of New York was entered in the said Court on the 21st day of January, 1943.

VII. During the trial of the said suit in the Supreme Court of the State of New York, and in the argument of the said appeals, your Petitioners asserted rights under the Constitution of the United States, and the said judgment and orders hereinbefore referred to were adverse to those rights, in violation of your Petitioners' rights under the Constitution of the United States.

In their notice of appeal from the order of the Appellate Division of the Supreme Court of the State of New York, in and for the First Department, to the Court of Appeals of the State of New York, your Petitioners specifically asserted their rights under the Constitution of the United

States, and stated specifically as a ground for the said appeal that the judgment or decree of the Supreme Court of the State of New York, and the order of the Appellate Division affirming the same, were in violation of your Petitioners' rights under the Constitution of the United States, and particularly the provisions of Amendments I, V and XIV thereof. The said notice of appeal contained the following statement, to wit:

> "PLEASE TAKE FURTHER NOTICE that the appeal is taken upon the following ground, among others:
> That said judgment and order are violative of Constitution of the United States, particularly Amendments I, V and XIV thereof, and the Constitution of the State of New York, particularly Article I, Section 8, thereof."

VIII. The Court of Appeals of the State of New York considered the rights asserted by your Petitioners under the Constitution of the United States; and the determination and decision of the said Court of Appeals was adverse to the rights of your Petitioners under the Constitution of the United States. The fact that the said Court considered the rights asserted by your Petitioners under the Constitution of the United States appears, among other things, from the following language used by the majority of the said Court in their opinion, to wit:

> "It has been found by the lower courts that the picketing of the World Cafeteria was at all times orderly and peaceful and that no acts of violence had been threatened or committed by the defendant union. The defendants had the constitutional right to accurately and truthfully and without violence, force or coercion, or conduct otherwise unlawful or oppressive, make their grievances known to the public."

IX. That the said decision and determination was and is contrary to the rights asserted by your Petitioners under the Constitution of the United States appears from the order of the said court, which, as already stated, affirmed the judgment of the Supreme Court of the State of New York, which was in derogation of the said asserted rights.

B

The Question Presented

The sole question presented is:

Is the decree of the Supreme Court of the State of New York, affirmed by the Court of Appeals of the State of New York, absolutely prohibiting the orderly and peaceful picketing by Cafeteria Employees Union, Local 302, of the cafeteria located at 838 East 180th Street, Borough of the Bronx, City of New York, in the course of a labor dispute, violative of the rights of your Petitioners under the provisions of the Constitution of the United States and the Articles of Amendment thereto as construed by this Court?

C

Reasons Relied On For the Allowance of the Writ

The question presented is one of constitutional interpretation, namely, whether under our constitutional system, and particularly the guarantees contained in the First, Fifth and Fourteenth Amendments, a State may, by a judicial decree, absolutely prohibit the imparting of information concerning a labor dispute by means of pickets who impart such information either by word of mouth or the display of written or printed signs. It is the contention of your Petitioners that such action is contrary to the Constitution of the United States and its Amendments, as construed and interpreted by this Court in numerous decisions in the recent past.

We believe that the judgment and order to be reviewed are clearly contrary to the decisions of this Court; and also that the matter involved is of great public importance in that it affects the rights of all organized labor in the State of New York to picket in an orderly and peaceful

manner in the course of labor disputes arising in that State.

Your petitioners therefore verily believe that the application presents a case cognizable under the rules of this Honorable Court, and one eminently proper for review by this Honorable Court.

WHEREFORE, your petitioners respectfully pray that a *writ of certiorari* be issued out of and under the seal of this Honorable Court, directed to the Court of Appeals of the State of New York, commanding that Court to certify and to send to this Court for its review, a full and complete transcript of the record of all proceedings in the said suit, and to stand to and abide by such order and direction as your Honorable Court shall deem meet and the circumstances of the case require, and that your petitioners may have such other and further relief or remedy in the premises as to this Honorable Court may seem just and proper.

Dated: New York, February 15, 1943.

LOUIS B. BOUDIN,
Of Counsel for Petitioners.

IN THE

Supreme Court of the United States

OCTOBER TERM 1942

No. .....

CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH,
Petitioners,

against

GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WAAL, and DEMOSTHENES LOIZIDES.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

POINT I

The case involves rights guaranteed under the United States Constitution.

The case clearly involves rights guaranteed under the Constitution of the United States,—namely, the rights of free speech and free press. This has been held so often by this Court in recent years that we do not deem it necessary to labor the point.

Senn v. *Tile Layers' Union*, 301 U. S. 468, 478;
Thornhill v. *Alabama*, 310 U. S. 88;
A. F. L. v. *Swing*, 312 U. S. 321;
Bakery & Pastry Drivers' Union v. *Wohl*, 315 U. S. 769.

POINT II

The matter involved is of the highest public interest.

Needless to say, also, the matter is of the greatest public importance,—the right of organized labor to picket in an orderly and peaceful manner in the course of a labor dispute. This, too, need not be labored further, as it is apparent from the nature of the decision sought to be reviewed. It was also in a sense formally certified to by the minority of the Court of Appeals of the State of New York, consisting of Chief Judge Lehman and Associate Judges Loughran and Desmond, who concluded their vigorous dissenting opinion with the following sentences:

> "In this small lawsuit there is at hazard, just as surely as in great strifes that sweep the world, an ancient and inalienable right. If that right cannot find vindication in the courts it has little chance elsewhere."

POINT III

The decision sought to be reviewed is clearly in conflict with the decisions of this Court.

It is also clear from a mere statement of the case that the decision sought to be reviewed is contrary to the recent decisions of this Court construing the constitutional guarantees of the Federal Constitution asserted by Petitioners in this case. Again, we believe, the matter is too plain to require elaborate argument. We shall therefore limit ourselves to quoting a portion of the dissenting opinion filed by Chief Judge Lehman and two Associate Judges of the Court of Appeals of the State of New York; which sufficiently summarizes the argument presented by us in that court on the constitutional aspect of the case, and refers to some of the decisions of this Court upon which we relied in that court and rely here. In their opinion the dissenting judges of the Court of Appeals said on this branch of the case:

"Even if this injunction were not unlawful under section 876-a and under our decisions, early and late, even if there were no labor dispute and no case growing out of a labor dispute, this ban against peaceful picketing would still be violative of the Federal Bill of Rights. Most plainly is this pointed out in *Bakery Drivers* v. *Wohl* (315 U. S. 769), where the Supreme Court noted (p. 774) that the New York courts had seemed to assume that the legality of the injunction followed from a determination that a labor dispute was not involved. 'Of course,' said the Supreme Court 'that does not follow; one need not be in a "labor dispute" as defined by the State Law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive.' (See, also, *Thornhill* v. *Alabama*, 310 U. S. 88, 100; *Drivers* v. *Meadowmoor*, 312 U. S. 287, 296-298; *A. F. of L.* v. *Swing*, 312 U. S. 32.) Nothing is now better settled than that picketing is an exercise of the constitutional right of free speech, that it needs no authorization from the State, which may in proper case regulate picketing, but may never forbid it."

CONCLUSION

This case is clearly one in which the public interest requires a full review by this Court of the serious constitutional questions involved. A *writ of certiorari* should therefore be granted by this Court so that a full argument of the constitutional questions raised may be had, and judgment directed by this Court in accordance with its interpretation of the constitutional rights involved.

Dated: New York, February 15, 1943.

Respectfully submitted,

Louis B. Boudin,
Of Counsel for the Petitioners,
20 West 43rd Street,
New York City.

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IN THE

Supreme Court of the United States

OCTOBER TERM 1942

No. .....

CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH,
Petitioners,

against

ELIAS TSAKIRES, KALLIS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARY YORWICK, JAMES LOIZIDES, and LOUIS LOIZIDES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioners, Cafeteria Employees Union, Local 302, and William Mesevich, respectfully pray that a *writ of certiorari* issue to review the order of the Court of Appeals of the State of New York, affirming an order of the Appellate Division of the Supreme Court of the State of New York, in and for the First Department, which said last mentioned order affirmed a judgment of the Supreme Court of the State of New York, County of the Bronx, in favor of Elias Tsakires and others, as plaintiffs, and against

these Petitioners, as defendants, whereby Petitioners were enjoined and restrained from stationing pickets at or near a certain cafeteria or restaurant located at 726 East Tremont Avenue, Borough of the Bronx, City of New York.

And in support of their petition, your Petitioners respectfully show to this Honorable Court:

A

Statement of the Matter Involved

This is one of a brace of cases brought at the same time by the same attorney and tried before the same judge in the Supreme Court of the State of New York, Bronx County (although a week apart); and argued at the same time in the Appellate Division of the Supreme Court of the State of New York, in and for the First Department, as well as in the Court of Appeals of the State of New York. They involve the same state of facts exactly, except for a difference in names, some of the dates, and other minor matters. In order, therefore, to avoid repetition, we respectfully refer to our petition in the matter of Cafeteria Employees Union and another, Petitioners, against Gus Angelos and others, submitted simultaneously herewith, which is herewith made part hereof, for a full statement of the facts involved, and we shall state here only the points wherein the facts in this case differ from those in the case just referred to. These are as follows:

1. The cafeteria involved in this case is located at 726 East Tremont Avenue, Borough of Bronx, City of New York; its owner is Louis Loizides (a brother of Demosthenes Loizides, involved in the accompanying application); the trade name used was "The Cosmo Cafeteria"; and the picketing commenced on the 14th day of April, 1939—one day earlier than in the accompanying case.

II. The findings and judgment were alike in both cases, except for immaterial differences, such as that the finding in the present case was that the pickets told prospective customers that there was a strike in the cafeteria in question, while in the accompanying case the pickets were found to have told prospective customers that by patronizing the cafeteria there in question the patrons would be helping the cause of Fascism.

There were no separate opinions written in this case, but the Judges who wrote the opinions in the accompanying suit filed memoranda as follows:

Judge Rippey, who wrote the prevailing opinion in the *Angelos* case filed the following memorandum:

> "The controlling facts in this case do not substantially or materially differ from those in the case of *Angelos, et al.*, against the same defendants in which a decision is being handed down herewith. The unlawful conduct of the defendants here found to exist is similarly subject to judicial restraint. The judgment appealed from should be affirmed, with costs."

Judge Desmond, who wrote the dissenting opinion in the *Angelos* case, wrote the following memorandum:

> "This case is so nearly identical with *Angelos* v. *Mescvich*, decided herewith, that it must follow the same course. The judgment should be reversed and the complaint dismissed, with costs."

B

The Question Presented

The sole question presented is:

Is the decree of the Supreme Court of the State of New York, affirmed by the Court of Appeals of the State of New York, absolutely prohibiting the orderly and peaceful picketing by Cafeteria Employees Union, Local 302, of the cafeteria located at 736 East Tremont Avenue, Borough

of the Bronx, City of New York, in the course of a labor dispute violative of the rights of your Petitioners under the provisions of the Constitution of the United States and the Articles of Amendment thereto as construed by this Court?

C.

Reasons Relied On For the Allowance of the Writ

The reasons for the allowance of the writ in this case are the same as those stated in our application for a *writ of certiorari* in the other case involved in this brace of cases, the case which in the State Court bore the title of *Angelos, et al.* v. *Mesevich*, and need not therefore be stated here at length. We therefore respectfully refer the Court to our Petition in that case.

For the reasons stated in that Petition, your Petitioners verily believe that this application presents a case cognizable under the rules of this Honorable Court, and one eminently proper for review by this Honorable Court.

WHEREFORE, your Petitioners respectfully pray that a *writ of certiorari* be issued out of and under the seal of this Honorable Court, directed to the Court of Appeals of the State of New York, commanding that Court to certify and to send to this Court for its review, a full and complete transcript of the record of all proceedings in the said suit, and to stand to and abide by such order and direction as your Honorable Court shall deem meet and the circumstances of the case require, and that your Petitioners may have such other and further relief or remedy in the premises as to this Honorable Court may seem just and proper.

Dated: New York, February 15, 1943.

LOUIS B. BOUDIN,
Of Counsel for Petitioners.

IN THE

Supreme Court of the United States

OCTOBER TERM 1942

No. .....

CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH,
Petitioners,
against
ELIAS TSAKIRES, KALLIS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARY YORWICK, JAMES LOIZIDES, and LOUIS LOIZIDES.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

For the reasons stated in the foregoing Petition, it is unnecessary to state here at length the arguments in support of this Petition; and we respectfully refer the Court to our brief in support of the accompanying application in the case known in the state courts as *Angelos, et al. v. Mesevich*, for a statement of our general argument in support of the Petition herein.

There is, however, one point which we shall discuss briefly here,—the point that might be raised by the minor difference in the findings in the two cases pointed out above. The Court will recall that in the accompanying case there was a finding by the trial court that the pickets told prospective customers that by patronizing the business of the

plaintiffs in that case, they would be helping Fascism. There is no such finding in this case. Instead thereof there is, however, a finding in this case that the signs carried by the pickets stated that there was a strike in the cafeteria in question in this case, while, as a matter of fact, there was no such strike. This finding, as is pointed out in the opinion of the minority of the Court of Appeals of the State of New York, is contrary to the evidence. And we respectfully submit that a judgment based on a finding which has no evidence whatever to support it is clearly wanting in *due process of law*.

It seems to us unnecessary to argue at length the proposition that the basic requirement of due process is that a judgment should be supported by evidence. Otherwise, the provision for due process of law contained in the Fourteenth Amendment would be utterly worthless,—since every judgment is, formally, based on a finding of guilt or liability after a hearing of the parties and the evidence adduced by them.

Aside from that, however, and assuming that the finding were based on evidence, that would not dispose of the constitutional problem involved,—the protection extended by the United States Constitution to free speech and free press against any abridgment or invasion by any State authority. On that assumption, the decision of the courts of the State of New York would amount to the legal doctrine that the State has a right to abridge, curtail or destroy, the right of free speech or free press as a punishment for a past abuse of the same. Clearly, that is contrary to the spirit of our constitutional system and the express provisions of the United States Constitution as construed by this Court.

It is manifest that neither in a criminal prosecution nor in a civil suit can a State court, either by way of punishment or retribution, deprive a defendant of his right *to speak or publish the truth in the future*, guaranteed to him by the Constitution of the United States. And it must be

borne in mind that the decree in question herein does not enjoin the petitioners from picketing in the future with untruthful signs, but with *any* signs whatsoever. Indeed, *all* picketing, with or without signs, is thereby prohibited,—apparently for all eternity.

CONCLUSION

This case is clearly one in which the public interest requires a full review by this Court of the serious constitutional questions involved. A *writ of certiorari* should therefore be granted by this Court so that a full argument of the constitutional questions raised may be had, and judgment directed by this Court in accordance with its interpretation of the constitutional rights involved.

Dated: New York, February 15, 1943.

Respectfully submitted,

Louis B. Boudin,
Of Counsel for the Petitioners.
20 West 43rd Street,
New York City.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH, Petitioners, against GUS ANGELOS, et al., Respondents.	No. 36
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ON WRITS OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF FOR PETITIONERS

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ON WRITS OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF FOR PETITIONERS

Jurisdiction

The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code, as amended by Act of Dec. 23, 1914, c. 2, 38 Stat. 790; Act of Sept. 6, 1916, c. 448, Sec. 2, 39 Stat. 726; Act of Feb. 17, 1922, c. 54, 42 Stat. 266; Act of Feb. 13, 1925, c. 229, Sec. 1, 43 Stat. 937; Act of Jan. 31, 1928, c. 14, Sec. 1, 45 Stat. 54. 28 U. S. C. A., Sec. 344(b).

Review is sought of decisions of the Court of Appeals of the State of New York, the court of last resort of that

state, made January 21, 1943, which affirmed orders of the Appellate Division of the Supreme Court of the State of New York, in and for the First Judicial Department, dated April 10, 1942, which affirmed judgments or decrees made by the Supreme Court of the State of New York, County of the Bronx, entered September 20, 1939.

Applications for writs of certiorari were filed in this Court on April 9, 1943, and writs granted by order of this Court dated June 14, 1943.

Review by this Court is sought on the ground that the judgments involved denied to the petitioners a right, privilege or immunity, claimed by them under the Constitution of the United States. The notice of appeal to the Court of Appeals, in each case, contained the following:

> "PLEASE TAKE FURTHER NOTICE that the appeal is taken upon the following ground, among others:
> That said judgment and order are violative of the Constitution of the United States, particularly Amendments I, V and XIV thereof, * * *" (fols. 301, 310).

After the decisions of the Court of Appeals, petitioners moved in that court to amend the remittiturs of that court, remitting the cases to the court of original jurisdiction, by specifically reciting that the constitutional question had been raised and necessarily passed upon by the Court of Appeals. The said motions were granted by the Court of Appeals in the following language:

> "Motions to amend the remittiturs granted. Return of remittiturs requested and when returned they will be amended by adding thereto the following: Upon this appeal there was presented and necessarily passed upon a question under the Constitution of the United States, viz: The defendants argued that the injunction granted herein violated the rights of freedom of speech and assembly guaranteed by the First and Fourteenth Amendments of the Constitution of the United States. This court held the injunction aforesaid did not violate the rights of freedom of speech and assembly guaranteed by the First and Fourteenth Amendments of the Constitution of the United States" (290 N. Y. 324).

Nature of the Suits and Judgments Sought to be Reviewed

These were suits in equity by persons claiming to be engaged as co-partners in the cafeteria business in the Borough of Bronx, City and State of New York, to enjoin a labor union consisting of employees in the cafeteria industry from picketing the cafeterias claimed to be owned by plaintiffs; and the decrees made by the Supreme Court of the State of New York and affirmed by the Court of Appeals enjoined all picketing. The prohibition is in the following language:

> "ORDERED, ADJUDGED AND DECREED, that the plaintiffs have judgment against the defendants for a permanent injunction restraining them, and the defendants hereby are restrained and enjoined from stationing pickets at or near the plaintiffs' place of business at * * *, Borough of the Bronx, City of New York, and from interfering with the plaintiffs' customers who may seek to enter their place of business, or to prevent by coercion or otherwise any customers of the plaintiffs seeking to enter plaintiffs' place of business, and from interfering in any other wise with the plaintiffs' business."

The Question Presented

The sole question presented is:

"Are the decrees of the Supreme Court of the State of New York, affirmed by the Court of Appeals of that state, absolutely prohibiting the orderly and peaceful picketing by Cafeteria Employees Union, Local 302, of the cafeterias mentioned in the decrees under review in the course of a labor dispute, violative of the rights of the petitioners under the provisions of the Constitution of the United States and the Articles of Amendments thereof, as construed by this Court?"

Background

The passage by the New York Legislature in 1935 of an anti-injunction law modelled after the Norris-LaGuardia Act (C. P. A. Sec. 876-a, Laws of 1935, Ch. 477, in effect April 25, 1935), led to the adoption by some employers of various schemes which, it was hoped, would take their labor difficulties out of the domain of "labor disputes" as defined by that Act. These schemes usually passed muster in the lower courts which, in New York at least, have been more favorable to the granting of injunctions in labor disputes than the appellate courts. Occasionally, these courts would also find, by way of makeweight, that the union involved had resorted to some act of violence or threat of violence, thus making it impossible for the Court of Appeals to pass on the schemes as such, since the New York Court of Appeals is prohibited from reviewing questions of fact,—the finding of violence precluding review. Occasionally, however, these cases have reached the Court of Appeals; and until recently that court has usually been astute to detect these schemes and reasonably certain to discourage them.

One of the consequences of this sort of litigation has been that the attention of the courts has been centered on the question as to whether or not the situation involved a "labor dispute",—with the unfortunate result that when the trial court came to the conclusion that no labor dispute was involved, an injunction usually followed almost as a matter of course, without regard to constitutional or other limitations. The various schemes resorted to in order to create a "no labor dispute" situation is well illustrated in one of the cases which reached the Court of Appeals; and the incidental result referred to above is illustrated in another case which reached the Court of Appeals and also this Court.

In the first of the cases just referred to, a corporation which became involved in a labor dispute brought suit for

an injunction claiming that no labor dispute was involved, because all of its employees were its stockholders. The trial court granted an injunction; but the Court of Appeals reversed, holding that the stockholder character of plaintiff's employees was immaterial to the question of "labor dispute".

Boro Park Market v. *Heller,* 280 N. Y. 481.

Thereupon the corporation was promptly dissolved, and the stockholders became "co-partners". A new suit was then brought by the same individuals, the plaintiffs now claiming immunity because of their character of "co-partners" instead of stockholders; and they again obtained an injunction *pendente lite* at Special Term of the Supreme Court. The Appellate Division reversed the injunction order on the ground that the bona fides of the partnership should have been inquired into by the Special Term, and a trial of that issue was ordered.

Kershnar v. *Heller,* 258 App. Div. 751.

The disregard of constitutional rights resulting from the fact that the courts' attention is centered on the question of construction and application of the state statute is illustrated in a case which ultimately came before this Court at its October, 1941, term,—which case also illustrates the fact that by whatever name these disputes are called they involve very serious problems affecting organized labor. In that case, dealers in bakery products brought suit against a drivers' union praying for an injunction, claiming that because their businesses were "one man" or "family" businesses the dispute with the union was not a "labor dispute". They obtained an injunction at Special Term which was affirmed by the Appellate Division, First Department, without an opinion, but with one justice dissenting in the following memorandum:

> "Upon the facts found herein, the injunction should not have been granted, and the complaint should have

been dismissed. Though plaintiffs had no employees, they were conducting business as part of a widespread system of 'peddling' that seriously menaced the standards sought to be maintained by defendant union. 'Peddling' means an arrangement whereby former drivers for manufacturers are aided in procuring trucks, and go into business distributing the products of the manufacturers. Such peddlers work seven days a week, and longer than union hours. Defendant union consists of drivers in the same industry. It has a vital interest in maintaining employment of its members, shorter hours, and a day of rest in seven. Therefore, a labor dispute was involved, and it was proper and lawful for it to picket in an orderly manner when defendant wished to protest against the action of the peddlers."

Wohl v. *Bakery and Pastry Drivers & Helpers Local 802*, 259 App. Div. 868.

The Court of Appeals, in its turn, affirmed the judgment in a per curiam opinion in which the ground for affirmance is stated as follows:

"The justice at Special Term (Noonan, J.), in granting the injunction, found, as conclusions of law, that a previous order of the court at Special Term (McLaughlin, J.), made in connection with a motion to dismiss the complaint, 'established * * * that a labor dispute was not involved in this action and that section 876-a of the Civil Practice Act (entitled 'Injunctions issued in labor disputes') did not apply'; and that 'the plaintiffs are the sole persons required to run their business and therefore they are not subject to picketing by a union or by the defendants who seek to compel them to employ union labor'."

Wohl v. *Bakery and Pastry Drivers & Helpers Local 802*, 284 N. Y. 788, 789.

This Court reversed for constitutional reasons, and its decision will be discussed further below. The serious problem presented to organized labor by the particular device

resorted to by the employer in the present case was pointed out in an opinion rendered in another case decided by the New York Supreme Court, in which the court of first instance disapproved of the scheme and refused the injunction. In that case the Court said:

> "The question of whether a partnership exists may not be determined merely by counting the number of persons in the combination. But when a complicated business, which usually requires helpers, is said to be operated without a single employee, and that each activity from the most menial chore to the executive branch, it is asserted, is cared for exclusively by partners, who say they are content to draw as a reward for their labors (of 12 to 14 hours per day) upon profits calculated to some degree at least upon investment (one with as low as $100 invested), a situation is presented that would breed suspicion even if the story were based upon believable testimony.
>
> I think that the alleged arrangement is a scheme—simple to concoct, in effect seriously destructive—born of a desire to reduce overhead by seeking to avoid an employer's financial responsibilities as required by those statutes that treat with employment of labor, workmen's compensation, unemployment insurance, and more important, to win for this enterprise the Labor Law immunities which surround a 'one man business' (See Thompson v. Boekhout, 273 N. Y. 390).
>
> *Our labor and social legislation—enlightened and human—enacted for the purpose of improving the condition of labor and elevating the standard of living of workers, would be nullified and its hopeful aims aborted if such a palpable evasion of law were to be countenanced.*" (Italics supplied throughout unless otherwise stated.)

Saito v. *Waiters & Waitresses Union, Local No. 2*, 12 N. Y. Supp. (2d) 283.

The Dispute and the Suits

For some years prior to April 14, 1939, Demosthenes Loizides owned and operated a cafeteria at No. 838 East 180th Street, in the Borough of Bronx, New York City, known as "World Cafeteria"; and his brother, Louis Loizides, owned and operated a cafeteria at No. 726 East Tremont Avenue, in the Borough of Bronx, New York City, known as "Cosmo Cafeteria". Demosthenes Loizides employed six workers in his cafeteria, and Louis Loizides employed eight workers.

Some time prior to the 14th day of April, 1939, a representative of petitioner Cafeteria Employees Union, Local 302 (hereinafter referred to as Local 302) approached the Loizides brothers with a request or demand for collective bargaining agreements covering their respective employees. This request or demand was refused, and thereupon petitioner Local 302 commenced picketing of the two cafeterias, putting up a "picket line" consisting of one picket in front of each of the cafeterias.

Thereupon and on April 22, 1939, each of the Loizides brothers allegedly entered into a partnership agreement with his employees; and this was followed by the two "partnerships" bringing, simultaneously, the two suits which resulted in the judgments under review. The two "partnership" agreements were prepared, and the two suits brought by the same attorney,—the "partnership" agreements and the complaints in the suits being in identical language except for difference in the names of the parties and the addresses of the cafeterias. Concededly, the "partnerships" were created in order to permit the suits to be brought,—the purpose of the latter being to enjoin the picketing. Demosthenes Loizides expressly so testified, his testimony being as follows:

> "Q. In other words, the reason you formed the partnership was to avoid a picket line walking up and down in front of your place? A. That is right, because it hurts my business" (No. 36, fol. 151).

These admissions by the Loizides brothers and their counsel appear in various forms throughout the record, and was assumed to be the fact by the trial court in disposing of the case, as will appear from certain colloquies between court and counsel quoted in the margin.[1]

The Pleadings

The complaint in each case alleges: That the plaintiffs are co-partners and the sole owners of the cafeterias involved. That plaintiffs "do all the work in connection with said cafeteria without any outside assistance". That no

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[1] "Q. Do you have the books and records of the World Cafeteria here pursuant to the subpoena that was served on you?

The Court: What more do you want? This man said he formed the partnership to avoid paying union dues. What was the answer to that question?

(The following part of the record was read:

'Q. The reason why you formed this partnership was in order to avoid the unionization of your place of business; isn't that right? A. The reason I formed that partnership is because people that work for me did not want it. They did not feel like paying dues to anybody for making a living, and I did not want it, either.

'Q. In other words, the reason you formed the partnership was to avoid a picket line walking up and down in front of your place? A. That is right, because it hurts my business.')

The Court: There is your case, right there.

Mr. Feinberg: We claim it is not a bona fide partnership.

Mr. Delman: I will state to the Court frankly that plaintiffs' case stands or falls—your Honor got the proposition very neatly and quickly—we claim that is exactly what we did, and we have a perfect right to do so under the Court of Appeals decision, as pointed out in my memorandum of law.

Mr. Feinberg: I don't want to argue.

The Court: No, but there is the case, and you have got it where it cannot be controverted; you have got it from the plaintiff, where there is no controversy, and you are going to succeed or fail right there. We are not going into the question of purpose any further.

Mr. Feinberg: I am not going into the question of the purpose any further, but there are facts that were brought out" (No. 36, fols. 149-152).

strike has ever been called at the plaintiffs' place of business, and that there was no labor dispute "between the plaintiffs and any employees". And that the plaintiffs, "as a result of the unlawful practices of the defendants" have suffered and will suffer irreparable damages. The "unlawful practices" are described as follows:

> "That individuals under the control of the defendants have been picketing said plaintiffs' cafeteria, bearing false and misleading signs that tend to create the impression that the plaintiffs are unfair to organized labor, and also tend to create the impression in the eyes of the public that those pickets were previously employed by the plaintiffs."
>
> "That those signs carried by the pickets are untrue and known to the defendants to be untrue, *because* there are no employees at the place of business of the plaintiffs and the plaintiffs are not unfair to organized labor."

The answers, which are identical, deny the material allegations of the complaints, and set up the following by way of affirmative defense:

> "That the enterprise conducted and carried on under the name of * * * is the result of an arrangement, scheme, plan, design, and conspiracy on the part of the plaintiffs, and particularly on the part of the plaintiff * * * Loizides to circumvent the laws of the State of New York by creating a fictitious partnership for the purpose of representing that he employs no help and thereby to gain immunity from the statutes of the State of New York with respect to labor and social legislation, and further, to avoid an employer's financial responsibility as required by the laws of the State of New York, particularly those laws dealing with labor, workmen's compensation and unemployment insurance.
>
> That the plaintiffs herein are not actually co-partners but that the enterprise known as * * * is owned, operated and controlled by the plaintiff * * * Loizides.
>
> That an actual controversy and labor dispute exists between the plaintiff * * * Loizides and the defendant union, and that such controversy and labor dispute is

concerned with, among other things, the question of social and economic conditions in the restaurant industry in the City of New York, including standards of employment and working conditions.

That as the result of a concealed relationship of employer and employee existing between and among the plaintiffs, and as a result of the failure on the part of the plaintiff * * * Loizides to comply with the statutes of the State of New York with respect to employment of labor, and as a result of the fraudulent plans, scheme and design of the plaintiffs, said plaintiffs are enabled to unfairly compete with enterprises of a similar kind and nature and to undermine conditions of labor regulated by the statutes of the State of New York and social and economic conditions and to thereby create chaos and unemployment in the restaurant industry."

The Trials and the Findings

A. The Trials.

At the trials, the attorney for the respondents (plaintiffs in the state courts) did not attempt to dispute the allegations of the answers to the effect that the partnerships alleged in the complaints had been created in the midst of existing labor disputes between the then owners of the cafeterias and the labor union involved, in an attempt to take the matters out of the purview of Section 876-a of the Civil Practice Act. On the contrary, as already stated, that was expressly conceded. It was claimed, however, that plaintiffs had the right to do so, and, having done so, the labor disputes theretofore existing had been effectually terminated, and Section 876-a did not apply. The court sustained that position, and thereupon refused to permit the petitioners (defendants in the State courts) to prove the further allegations of their answers that the partnerships were not *bona fide* and in effect non-existent. However, in the course of the presentation of the case for the plaintiffs, sufficient facts appeared to lead a minority of both the Appellate Division and the Court of Appeals

to hold, in effect, that the partnerships were sham and fraudulent. The undisputed facts as they appeared in the course of the presentation of the respondents' own case were thus summarized by the minority of the Court of Appeals in their dissenting opinion:

> "Plaintiff Loizides owned a restaurant. The other six plaintiffs were his employees. Defendant union tried to negotiate a collective bargaining agreement with owner Loizides. Loizides refused to negotiate. Beyond any doubt there was then and there a labor dispute. The union, believing—and surely not being without good reason for that belief—that it had a settled and absolute right to advertise to the public the grievance it claimed to have, began to picket the restaurant. The 'picket line' consisted of *just one picket*. The Trial Justice has specifically found that the one-man picketing 'was at all times orderly and peaceful', that 'no acts of violence have been threatened or committed by the defendant union,' that 'the picket on the picket line * * * requested the public not to patronize said cafeteria since it was unfair to union labor, and made no other statements or representations' * * *.
>
> "Owner Loizides, for the express and admitted purpose of removing the one-man picket line from in front of his restaurant, called together his six employees and with them signed a document which made them all his partners. Having thus completely changed the aspect of his enterprise, Loizides, with all his newly-minted partners joined as co-suitors, demanded of the court of equity that defendants be forthwith and forever enjoined from picketing the cafeteria. Section 876-a troubled Loizides not at all. He and his erstwhile workers, he explained to the court, were now co-equals and co-proprietors, and so, he argued, there could not be any 'labor dispute' between the plaintiffs and the defendant union. Any 'labor dispute' there might have been in the pre-partnership days, plaintiff told the court, came to a full and final stop when the six employees, without leaving their posts or doffing their uniforms, assumed the roles of partners. Through such a *device* and on such an argument has the owner of this restaurant secured an injunction which in so many words prohibits any picketing of any kind whatever" (fols. 353-357).

B. The Findings.

The findings made by the trial judge were substantially the same as those proposed by the plaintiffs' attorney, consisting in the main of the allegations of the complaint, plus three findings with respect to the partnership to be noted below, and certain additional findings proposed by the defendants embodying facts as to which there was no dispute. The most significant thing about the findings is that the attorney for the respondents did not propose nor did the court make any finding that the partnership was *bona fide*. The findings as proposed by the attorney for the respondents and found by the court on that subject are as follows:

> "That the partnership formed by the plaintiffs is a valid partnership
>
> That the partnership herein was formed on or about April 22, 1939, and all the plaintiffs signed the partnership agreement.
>
> That a certificate doing business as The World Cafeteria was duly filed by the plaintiffs in the office of the County Clerk of the County of Bronx" (Findings 3, 12, 13; fols. 77, 81-2).

It is clear that the finding first quoted is merely a legal conclusion,—which the court apparently considered followed as a matter of law from the other two findings just quoted. And it is equally clear that the finding with respect to the present ownership of the cafeterias (Finding 2, fol. 77) is similarly a conclusion of law which the court believed flowed from the signing and filing of the papers referred to in Findings 12 and 13. It is also clear that Findings 4 and 5, to the effect that the signs carried by the pickets were "untrue" and "false and misleading", are mere conclusions of law based on the second half of the fifth finding, which in effect says that these signs were "untrue, false and misleading", *"because there are no employees at the place of business of the plaintiffs."*

On that point, the minority of the Court of Appeals said the following:

> "We have not overlooked findings of fact numbered Fourth and Tenth. The first of these charges the

picket with 'bearing false and misleading signs that tend to create the impression that the plaintiffs are unfair to organized labor, and also tend to create the impression in the eyes of the public that these pickets were previously employed by the plaintiffs.' Actually the picketing signs said nothing about a strike or a previous employment; they simply announced (according to plaintiff Loizides): 'This place is unfair to organized labor, please help us'."

At the request of petitioners, the court found, to begin with, that the picketing in question commenced about a week before the signing of the alleged co-partnership agreement. The court then made the following findings:

"That at no time did more than one person picket in front of The World Cafeteria at any time.

That none of the fire insurance policies covering the premises known as The World Cafeteria are in the names of any of the plaintiffs herein with the exception of the plaintiff Demosthenes Loizides.

That the picketing of The World Cafeteria was at all times orderly and peaceful.

That no acts of violence have been threatened or committed by the defendant union.

That the plaintiffs herein carry no workmen's compensation insurance.

That the plaintiffs herein pay no unemployment insurance taxes.

That the picket on the picket line in front of The World Cafeteria requested the public not to patronize said cafeteria since it was unfair to union labor, and made no other statements or representations" (Findings 17, 17A, 18, 19, 20, 22, 23; fols. 84-86).

The Appeals in the State Courts

Petitioners appealed from the decrees to the Appellate Division of the New York Supreme Court, First Judicial Department; the notice of appeal being in the usual form under the New York State procedure, which does not have to state the grounds of appeal. In their briefs, however,

counsel for petitioners raised the federal question along with the questions involved under state law. (See records and briefs, *Angelos* v. *Mesevich*, 264 App. Div. 708; *Tsakires* v. *Mesevich*, 264 App. Div. 708.) The Appellate Division affirmed by a divided court,—two of the five judges dissenting. The majority wrote no opinion. The minority voted to reverse and dismiss the complaint—

> "on the ground that the alleged partnerships among the plaintiffs are not bona fide. The testimony clearly indicates that the relationship of employer and employee continue to exist among these parties" (fols. 311-12, 321).

The petitioners then appealed to the Court of Appeals,—the notice of appeal specifically raising the constitutional question, as shown earlier in this brief. In disposing of the constitutional question adversely to the petitioners the majority of the Court of Appeals said:

> "It has been found by the lower courts that the picketing of The World Cafeteria was at all times orderly and peaceful and that no acts of violence had been threatened or committed by the defendant union. *The defendants had the constitutional right* accurately and truthfully and without violence, force or coercion, *or conduct otherwise unlawful* or oppressive to make their grievances known to the public. *But a citizen is not required to tolerate peaceful picketing* accompanied by untruthful representations, interference with his business *or coercive conduct designed to injure or destroy his business* whether a labor dispute exists or not."

As already pointed out, the statement with respect to "untruthful representations" was clearly unwarranted by the facts in the case as disclosed by the record, and must be assumed to have been used because of the supposed compulsion of some rule of state law, the compulsive effect of which was denied by the minority of the Court. "Coercive conduct" must be taken to refer to the economic effect of peaceful picketing.

The net result of the judgments herein was thus stated by the minority of the Court of Appeals in their dissenting opinion:

> "If the picketing described in those findings, herein quoted verbatim, is unlawful, then picketing has been absolutely and completely outlawed in this State."

POINT I

The Supreme Court will examine the record to ascertain for itself the facts involved in a constitutional problem.

The majority of the New York Court of Appeals seems to have found itself in a difficulty with respect to its power to review findings of the trial court affecting the question of the existence of a labor dispute, which we are frank to confess we do not understand, and which to the minority of that court seemed to be wholly imaginary.[2] We need not go into that here, since this Court is not only free to,

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[2] It should be noted that there is no claim that petitioners had in any way brought about or contributed to the existence of this difficulty, if it does exist. The absence of any finding as to the existence of the labor dispute before the formation of the "partnership" which loomed so large in the opinion of the majority was not due to any failure of petitioners' counsel to bring out the facts upon which such findings could be based, or to request that such findings be made when the facts appeared in the record, but to the refusal of the trial court to make the findings even though the facts appeared in the record and are undisputed. (See defendants' requests to find, particularly requests 3, 4, 5, at fols. 46-48.) Having made those requests, and the requests having been denied, there was nothing further that petitioners' counsel could do but to take the appeals which they did. There was no necessity under the New York practice for any exception to be taken to the refusal of the trial court to make these findings (C. P. A., Sec. 445). But even so there is actually a finding that the dispute pre-existed the formation of the copartnership, since Finding 16 finds that the picketing commenced on April 15 and Finding 12 finds that the alleged partnership was formed on April 22.

but of necessity must, decide for itself all questions of fact as well as of law which are involved in any problem arising under the United States Constitution. This applies even to questions of state law, notwithstanding the fact that ordinarily, when no constitutional problem is involved, this Court accepts the decisions of the state courts as the state law. Otherwise, an appeal to this Court for the protection of constitutional rights would be futile. This principle of our constitutional law has become settled at a very early date, and has never been questioned since. As was to be expected, the question first arose in connection with the "Impairment of Obligation of Contracts" clause of the Constitution. The first clear pronouncement of the principle was contained in the decision of this Court in the well-known *Piqua Bank Case.*

Piqua Branch Bank v. *Knoop*, 16 How. 369.

The question in that case was whether there was a contract which could be impaired. The state court, construing its own constitution and statutes, held that there was no contract to be impaired, but this Court held that there was such a contract and that it had been impaired. The principle itself is too well settled to require any citation of authority. We shall therefore only quote from a few of the decisions language which shows the amplitude of the principle and the sweep of its application so as to give full protection to the constitutional guarantee involved.

In the comparatively recent case of *Louisiana R. & N. Co.* v. *Behrman* (1914), Mr. Justice (later Chief Justice) Holmes, in delivering the opinion of this Court, said:

> "The defendant in error moves to dismiss, invoking the established rule that, where the state court gives no effect to the subsequent enactment, the jurisdiction of this court does not attach. (Citing cases.) We are of the opinion that the present case is not within this rule. It is equally well settled that, where the state court does give effect to later legislation which operates to impair the obligation of a contract if one exists,

this court is not deprived of jurisdiction because the state court has put its decision upon the ground that the contract was not made, or that it was invalid, or that it has become inoperative. In such a case, this court must determine for itself whether there is an existing contract. *Otherwise*, although it was the aim of the suit and the effect of the judgment to give vitality and operation to the subsequent law, and this court might be of the opinion that there was a valid contract which thereby would be impaired, *it would be powerless to enforce the constitutional guaranty.*"

Louisiana R. & N. Co. v. *Behrman*, 235 U. S. 164, 170.

Twelve years later the principle was thus stated by Mr. Justice Taft in delivering the unanimous opinion of this Court:

"The questions we have here to determine are, first, was there a contract, second, what was its proper construction and effect, and, third, was its obligation impaired by subsequent legislation as enforced by the state court? These questions we must answer independently of the conclusion of that court. Of course, we should give all proper weight to its judgment, *but we cannot perform our duty to enforce the guaranty of the Federal Constitution as to the inviolability of contracts by state legislative action unless we give the questions independent consideration.* It makes no difference what the answer to them involves, whether it turns on issues of general or purely local law, we cannot surrender the duty to exercise our own judgment."

Appleby v. *New York*, 271 U. S. 364, 379-380.

And in the most recent case dealing with the subject, this Court, speaking through Mr. Justice Roberts, reaffirmed this principle in the following language:

"On such a question, one primarily of state law, we accord respectful consideration and great weight to the views of the State's highest court but, *in order that the constitutional mandate may not become a deal*

> *letter, we are bound to decide for ourselves whether a contract was made, what are its terms and conditions,* and whether the State has, by later legislation, impaired its obligation."
>
> *Indiana ex rel. Anderson* v. *Brand*, 303 U. S. 95, 100.

A fortiori, this Court will determine for itself any question of law or fact the determination of which may become necessary in any inquiry with respect to the constitutional guarantees of the First and Fourteenth Amendments. So, when a conviction in a State court is attacked for failure to comply with the procedural requirements of due process, this Court is not bound by the formal findings of the State courts that the required procedure had been observed, and will examine for itself the question whether the findings are based upon fact, and whether the actual procedure followed was not a mere empty shell without real content.

> *Moore* v. *Dempsey*, 261 U. S. 86.
> *Powell* v. *Alabama*, 287 U. S. 45.
> *Norris* v. *Alabama*, 294 U. S. 587.

And the same is true, of course, in cases involving invasion of the right of free speech and free press, whether the same comes up by way of a conviction in a criminal court for the violation of a city ordinance or by a decree against picketing.

> *Schneider* v. *Irvington*, 308 U. S. 147.
> *Thornhill* v. *Alabama*, 310 U. S. 88.
> *Milk Wagon Drivers Union* v. *Meadowmoor Dairies*, 312 U. S. 287.
> *Murdock* v. *Pennsylvania*, 319 U. S. 105.

In the first of these cases this Court held that—

> "The courts should be astute to examine the effect of legislation which is charged to abridge freedom of speech and of the press."
>
> *Schneider* v. *Irvington*, 308 U. S. 147.

An examination of the opinion in the second case cited will show that this Court applied the rule to itself in exercising its power of reviewing judgments of state courts in matters affecting the constitutional guarantees of freedom of speech and freedom of the press involved in the right to peaceful picketing.

In the third case just cited, which involved the review of a judgment of a state court enjoining picketing, this Court said:

> "That is why this court has the limited power to search the records of the state courts where a claim of constitutionality is effectually made."
>
> *Milk Wagon Drivers Union* v. *Meadowmoor Dairies*, 312 U. S. 287, 293.

As already stated, the "astuteness" which the courts are required to use in examining decisions of state courts in order to ensure the protection of the constitutional guarantees of freedom of speech and of the press, applies to both questions of law and questions of fact, and the record will therefore be searched by this Court so that the Court may determine for itself whether the facts disclosed by the record justify the application of the legal principles applied by the state court, and a state court may not escape review by this Court by the device of placing the decision on a point of state law. So in the *Thornhill Case*, petitioner had been convicted of the crime of "unlawful intimidation", and it was claimed that because the conviction was of a crime against which the state was clearly entitled to protect its citizens, this Court was precluded from reviewing the facts of the case or inquiring into the effect of the ordinance for the violation of which the petitioner had been convicted. But this Court held that that plea was of no avail, and that—

> "It is imperative that when the effective exercise of the constitutional rights of freedom of speech and of the press is claimed to be abridged, the courts

should weigh the circumstances and appraise the substantiality of the reasons advanced in support of the challenged regulations."

Thornhill v. *Alabama*, 310 U. S. 88.

In the last case cited and the accompanying cases, which involved the distribution of literature by Jehovah's Witnesses, this Court went into the facts in order to determine for itself whether the activities of the petitioners amounted to "sales", as had been determined in the state courts, or to methods of propaganda, as claimed by the petitioners; and when this Court came to the conclusion that the claim of "sales" was insubstantial, even though actually present, when taken in connection with the activities as a whole, it did not hesitate to reverse the decisions of the state courts. Those cases were decided by a divided court, but the division did not relate to the right of this Court to inquire into the true nature of the activities which the state courts had declared to be "sales", but as to the result of such inquiry—i.e., whether the findings of the state courts were justified by the facts as disclosed by the records.

POINT II

The solution of the constitutional problem does not depend upon the existence or non-existence of a labor dispute.

The majority of the New York Court of Appeals centered its attention on the question of existence or non-existence of a labor dispute. But that matter is wholly immaterial from the constitutional point of view; and the only reason we have gone into the subject and intend to refer to it again further below, is to show that there was a real occasion for the exercise of the right of free speech and free press, and that the invasion of those rights

complained of are not merely technical or abstract but real and substantial, affecting important interests of the labor movement in general and of the labor union petitioner herein in particular.

That the right of peaceful picketing is not dependent upon the existence of a labor dispute has been expressly decided by this Court in a number of recent cases.

Milk Wagon Drivers Union v. *Meadowmoor Dairies*, 312 U. S. 287.

A. F. L. v. *Swing*, 312 U. S. 321.

Bakery & Pastry Drivers v. *Wohl*, 315 U. S. 769.

POINT III

The solution of the constitutional problem does not depend upon the motive which impels state action, but upon its effect.

Another principle which must be borne in mind in these discussions is that this Court, in reviewing state action in its relation to constitutional guarantees, cannot take into consideration the motives which animate the state organs in the action under review, but only its effects upon the constitutional right involved. The fact that a state law or a state judicial decision was not passed or made for the purpose of curtailing free speech, but in pursuit of an otherwise legitimate aim, will not save it from condemnation if the actual effect of the law or judicial decision is to curtail or impinge upon the right protected by the Constitution.

> "It is not the motive which caused the enactment of the law which is of account, but the effect of the enactment, impairing the rights resting in the contract."
>
> *Carondelet Canal & Nav. Co.* v. *Louisiana*, 233 U. S. 362, 376.

The fact that the state has the right to regulate its labor relations, or impose restrictions upon economic activities is therefore no excuse or license for the infringement of the rights of freedom of speech and of the press.

POINT IV

The right of free speech and free press cannot be taken away as punishment for past offenses.

Considerable misunderstanding has arisen with respect to the attitude of this Court on the subject of permissive state court action by way of limitation of freedom of speech and freedom of the press in labor disputes, because of some general language used by Mr. Justice Frankfurter in delivering the opinion of this Court in the *Meadowmoor Case*, and even more so because of some general language used by Mr. Justice Jackson in delivering the opinion of this Court in the *Wohl Case*. It is clear that the majority of the New York Court of Appeals saw in some of the expressions used by Mr. Justice Jackson in delivering the opinion of this Court in that latter case, a means of doing what this Court has repeatedly stated state courts may not do,—namely, draw the line of permissive action by parties to a labor dispute so narrowly as to infringe upon constitutional rights. We shall have to come back to this question again in discussing the facts in this case, and their significance in the light of this Court's previous decisions. At this point we merely desire to point out that whatever power a state court may have to curtail the rights of freedom of speech and freedom of the press in the exercise of the right of the state to protect itself against disorder and its citizens against violence, one thing it certainly cannot do,—namely, deprive a person of the freedom of speech and freedom of the press as a *punishment* for past conduct. In speaking for this Court in the *Meadowmoor Case*, Mr. Justice Frankfurter said:

"We have already adverted to the generous scope that must be given to the guaranty of free speech. Especially is this attitude to be observed where, as in labor controversies, the feelings of even the most detached minds may become engaged and a show of violence may make still further demands on calm judgment. It is therefore relevant to remind that the power to deny what otherwise would be lawful picketing derives from the power of the states *to prevent future coercion.* Right to free speech in the future cannot be forfeited because of dissociated acts of past violence. Nor may a state enjoin peaceful picketing merely because it may provoke violence in others."

Milk Wagon Drivers Union v. *Meadowmoor Dairies*, 312 U. S. 287, 296.

We also desire to respectfully call to the attention of the Court that there is a basic distinction between acts of violence and acts of other "unlawful conduct". We need not go into a discussion of this point at any length, since the solution of this particular problem is not necessary to a decision in our case. For, as will be seen further below, no "unlawful" action of *any* kind has been proven in this case. But since the problem is of great importance in our constitutional law, we believe that the matter should be briefly noted here. We therefore desire to point out that the *ratio decidendi* in the *Meadowmoor Case* excludes the application of the rule there applied with respect to any unlawful conduct other than violence. In speaking of the question of violence in its relation to free speech, Mr. Justice Frankfurter, speaking for the Court, said:

"It must never be forgotten, however, that the Bill of Rights was the child of the Enlightenment. Back of the guaranty of free speech lay faith in the power of an appeal to reason by all the peaceful means for gaining access to the mind. It was in order to avert force and explosions due to restrictions upon rational modes of communication that the guaranty of free speech was given a generous scope. *But utterance in a context of violence can lose its significance as an ap-*

peal to reason and become part of an instrument of force. Such utterance was not meant to be sheltered by the Constitution." (Ib. at p. 293.)

The *raison d'etre* for the rule applied by the Court in the case of violence clearly does not apply in the case of other kinds of "unlawful" conduct,—which may be taken care of by modes of legal action other than that of the curtailment of free speech. The case of picketing with allegedly false signs in a labor dispute should therefore be at least no different than the case of ordinary libel, in which it is the settled law that it may not be restrained by injunction. We therefore respectfully submit that the rule in the *Meadowmoor Case* with respect to such *quantitative* violence which may be deemed to *qualitatively* change the nature of the entire dispute should be limited to the special problem of violence and not be extended to "unlawful conduct" generally.

POINT V

The violation of petitioners' rights presents a serious threat to the vital interests of organized labor.

That petitioners were defending legitimate as well as important rights of organized labor is clear and undisputed. It is undisputed that a labor dispute had arisen, both in form and substance, between two employers and the labor union representing the organized workers of the calling in which their employees were engaged. That organizing activities are a legitimate interest of labor unions is now beyond dispute. And, clearly, this interest did not disappear because of the purely legalistic scheme of turning the workers into owners,—even if the operation were a bona fide one, as it clearly was not: Organized labor is not only interested in having all workers organized in labor unions, with all that it implies in legal protection by way of wages,

hours of labor, and conditions of employment, but also in eliminating competition with the already organized workers by the sweating condition which this "ownership" may bring in its train, even if bona fide.

Indeed, the alleged conversion of the former workers into "owners" intensified the dispute, because it actually destroyed certain legal safeguards, the protection of which even unorganized workers enjoy,—safeguards and protection in which the labor union involved was legitimately interested because their breakdown tends to lower the general standard of living of the workers in that industry. That the change from workers to alleged "owners" actually had that effect of breaking down those safeguards and protections was expressly found by the trial court, as shown by the findings quoted above. Clearly, therefore, the labor union involved had a legitimate interest to defend, and therefore the constitutional right to bring the dispute to the attention of the public at large, in an effort to enlist public sympathy on its side, as well as for the purpose of informing the misguided workers themselves as to the real meaning of their new status as alleged "owners".

> "Peaceful picketing,"—said this Court in the *Meadowmoor Case*,—"*is the workingman's means* of communication." (Ib. at p. 293.)

On the other hand, the State of New York had no legitimate interest to assert or defend in invading the constitutional rights of the workers involved. Concededly, there was no violence, and its peace was not disturbed. Nor did the union or its pickets do anything else that was "wrongful" *per se* which might require the stepping in for the protection of its citizens other than those involved in the dispute. It is clear that the organ of the State of New York here involved was attempting to use the prohibition of free speech and free press in order to take sides on behalf of the employer in the economic dispute here involved, so as to carry out what it conceived to be the state's policy with respect to labor disputes. And it is equally clear that

in order to do so, it attempted to turn the exercise of a constitutional right into an allegedly "wrongful" act by means of a strained interpretation of the state statute and of the common law of the state. Neither of these is binding upon this Court, which must itself determine what is right or wrong in connection with the exercise of constitutional rights. The legalistic legerdemain whereby the state court tried to exorcise the "labor dispute" from the situation, although the statute in question specifically provides that a labor dispute exists if the situation had its origin in a labor dispute, need not concern us here. Whether that interpretation was right or wrong as a matter of state law is immaterial here, since this Court has a right to say that no state can make, nor any state organ apply, any law which invades constitutional rights as interpreted by this Court. And this Court has repeatedly stated that peaceful picketing cannot be prohibited, either by state legislation or state judicial decision except under certain exceptional circumstances which are not present here.

Assuming that a state court may by injunction prevent the commission in the future of *any* "wrongful" act, it may do so, under the decisions of this Court, under two conditions only, both of which must concur: First, the "wrongful" act of which the enjoined party must have been guilty in the past must be of a very grave and serious nature. And, second, the "wrongful" act must be so *pervasive of the conduct complained of* that a claim can be reasonably put forward that the wrongful aspect of the act could not be separated from the conduct, and that it would therefore be futile to enjoin merely the wrongful aspect of the conduct while permitting the course of conduct itself to continue.

Such was the situation, the majority of this Court held, in the *Meadowmoor Case*,—the only case in recent years in which this Court affirmed a state court decision prohibiting peaceful picketing. But in affirming that judgment this Court was very careful to clearly set forth the exceptional nature of that case, and to reaffirm the gen-

eral principle contended for by us here. In stating the reasons for the decision in that case, Mr. Justice Frankfurter said:

> "The picketing in this case was set in a background of violence. In such a setting it could justifiably be concluded *that the momentum of fear generated by past violence would survive* even though future picketing might be wholly peaceful. So the supreme court of Illinois found. * * * These acts of violence are neither episodic nor isolated."

Nor did the Court leave it at that,—indicating only inferentially the limitations upon state action in dealing with free speech,—but the Court proceeded to specifically point out those limitations, and to make it clear that there was no intention to qualify the principles theretofore announced by this Court. We have already quoted the portion of the opinion of this Court in that case which clearly states that free speech cannot be abridged as a punishment for past offenses, no matter how serious, but that the exception is only made to cover circumstances clearly showing its necessity to prevent the future recurrence of violence. And that was followed by the specific declaration to the effect that—

> "We do not qualify the Thornhill and Carlson decisions. *We reaffirm them.* They involved statutes baldly forbidding all picketing near an employer's place of business. Entanglement with violence was expressly out of those cases. The statutes had to be dealt with on their face, and therefore we struck them down. *Such an unlimited ban on free communication declared as the law of a state by a state court enjoys no greater protection here.*"
>
> *Milk Wagon Drivers Union* v. *Meadowmoor Dairies*, 312 U. S. 287, 297.

And this declaration of steadfast adherence to constitutional principles theretofore announced was followed by this Court's decision in the *Swing Case*, in which this

Court reversed a judgment of the same state court, notwithstanding the fact that there had been considerable violence, but no proof that the violence was so enmeshed in the situation as to afford reasonable ground that it would continue if picketing were permitted to go on. In that case, this Court, again speaking through Mr. Justice Frankfurter, took occasion to re-state the importance of the constitutional principle involved, and to warn the state courts against its "mutilation" for light reasons. Said Mr. Justice Frankfurter for the Court:

> "Since the case clearly presents a substantial claim of the right to free discussion and since, as we have frequently indicated, that right is to be guarded with a jealous eye (citing cases), it would be improper to dispose of the case otherwise than on the face of the decree, which is the judgment now under review. * * *
>
> All that we have before us, then, is an instance of 'peaceful persuasion' disentangled from violence and free from 'picketing en masse or otherwise conducted' *so as to occasion 'imminent and aggravated danger'*. * * *
>
> Such a ban of free communication is inconsistent with the guaranty of freedom of speech. That a state has ample power to regulate the local problems thrown up by modern industry and to preserve the peace is axiomatic. But not even these essential powers are unfettered by the requirements of the Bill of Rights. *The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute*, whether those limits be defined by statute or by the judicial organ of the state. A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interest of all engaged in the same industry has become a commonplace. American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184, 209. *The right of free communication cannot therefore be mutilated* by denying it to workers, in a dispute with an

employer, even though they are not in his employ. Communication by such employees of the facts of a dispute, *deemed by them to be relevant to their interests,* can no more be barred because of concern for the economic interests against which they are seeking to enlist public opinion than could the utterance protected in Thornhill's Case. 'Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, *for freedom of speech is guaranteed by the Federal Constitution.*' Senn v. Tile Layers Protective Union, 301 U. S. 468, 478."

A. F. L. v. *Swing*, 312 U. S. 321, 325-6.

The decision in the *Swing Case* was followed at the following term of this Court by the decision in the *Wohl Case*,—a case which is on all fours with the present case. It will be recalled that in that case, the New York Supreme Court had granted an injunction, which was affirmed by the Court of Appeals, by attempting to draw the circle of economic competition so as to exclude from the concept of a labor dispute a case where the persons who complained of the picketing were "owners" and neither employers nor employees. But this Court held that the fact that plaintiffs were owners and were "the sole persons required to run their business" did not entitle them to an injunction which would prevent the labor-union complained of from carrying its grievance to the public, or from attempting to persuade the "owners" themselves that that status was disadvantageous to them, and that they would be better off if they were just ordinary drivers. In the opinion of this Court, delivered by Mr. Justice Jackson, this Court said:

"The controversy in the trial court centered about the issue as to whether a labor dispute was involved within the meaning of New York statutes. The trial court found itself constrained to hold that no labor dispute was involved and seemed to be of the impression that therefore no constitutional rights were involved. It concluded as a matter of law that the re-

spondents 'are the sole persons required to run their business and therefore they are not subject to picketing by a union or by the defendants who seek to compel them to employ union labor.' * * *

The respondents say that the basis of the decision below was revealed in a subsequent opinion of the Court of Appeals, where it was said with regard to the present case that 'we held that it was an unlawful labor objective to attempt to coerce a peddler employing no employees in his business and making approximately thirty-two dollars a week, to hire an employee at nine dollars a day for one day a week.' * * *

We ourselves can perceive no *substantive evil of such magnitude* as to mark a limit to the right of free speech which the petitioners sought to exercise. The record in this case does not contain the slightest suggestion of *embarrassment in the task of governance;* there are no findings and no circumstances from which we can draw the inference that the publication was attended or likely to be attended by violence, force or coercion, or conduct otherwise unlawful or oppressive; and it is not indicated that there was an actual or threatened abuse of the right to free speech through the use of excessive picketing."

Bakery & Pastry Drivers v. *Wohl*, 315 U. S. 769, 773-775.

We respectfully submit that the decisions of this Court in the three cases just discussed clearly require the reversal of the judgment here under review as inconsistent with the principles therein laid down,—quite apart from the broader considerations stated by a minority of this Court in the *Meadowmoor Case* and in the concurring opinion in the *Wohl Case*. The majority of the judges of the New York Court of Appeals apparently thought that the expression "conduct otherwise unlawful" gave the state courts *carte blanche* to decide for themselves what is "unlawful" in the sense of furnishing an excuse for the invasion of the great constitutional rights, the importance of which this Court has so often solemnly proclaimed. But, clearly, the use of that phrase did not imply any such intention on

the part of this Court, but was used merely because of a reluctance to lay down the rule in such absolute terms as might embarrass the states in the exercise of essential powers in grave situations.

That this Court intended that the exception should only apply to grave situations, and reserved the right to judge for itself as to the gravity of the situation involved in each case is self-evident. As we read the last quoted paragraph in the opinion of this Court, it lays down three propositions:

First: This Court will judge for itself as to the existence of the evil the existence of which is urged as the reason or excuse for the invasion of the fundamental right of free speech.

Second: In order that the existence of an evil may furnish a justification for such an invasion, the evil must be of a "magnitude" *commensurate with the importance* of the right involved.

Third: The nature of the evil to remedy which the exception is primarily, if not exclusively made, is "embarrassment in the task of governance".

We take it that no one will dare suggest that any such situation was presented in this case. Indeed, this case is a much more favorable one to the petitioners than was the situation in the *Wohl Case*. To begin with, there was no question of *bona fides* involved in that case. There was no question that the complainants in that case were genuine peddlers working under an arrangement of an entirely different kind than that of ordinary employees. That arrangement had concededly pre-existed the dispute there involved. Indeed, it was the existence of that condition or arrangement that led to the dispute.

In the case at bar, on the other hand, the "sole ownership" and "no employees" situation was clearly a fraudulent device resorted to for the very purpose of invading this

constitutional right. Even the court that issued the injunction did not find that the partnership was *bona fide*, but merely that it was "valid". But that is a weasel word when used in this connection: The partnership arrangement might very well be valid as among the persons who signed the agreement, and nevertheless be a fraudulent device as against outsiders. Two of the five judges of the Appellate Division were of the opinion that it was such a fraudulent device; and so were three out of the seven judges of the Court of Appeals. There is no necessity, however, to determine that question of fact in order to arrive at a proper decision of the present case. If the union was of the same opinion as the substantial minorities of the two appellate courts, it had the right to present its views of the situation to the public at large, and to enlist its sympathy in its struggle against the adoption by employers of a fraudulent scheme which was apparently becoming popular among employers.

Not that the exercise of the right depended on the fraudulent nature of the arrangement, since the arrangement threatened to undermine the standards of employment in the industry in any event. But it did furnish an additional grievance which the union had a right to carry to the public.

In the next place, in the *Wohl Case*, there was some justification for the claim that it was "oppressive" to require a man who earned only thirty-two dollars a week to pay nine dollars for one day's help to an outsider,—help which he claimed not to need. In our case there is not the slightest suggestion of "oppression". What the union was seeking was to organize the workers involved, so as to assure them of a living wage, working conditions usually enjoyed by union labor, and the protection of the liberal labor and social legislation of the State of New York which they were losing,—possibly without their being aware of it,—by the alleged change of their status from workers to "owners".

And in the third place, there is no element of secondary boycott which was claimed to exist in the *Wohl Case,* because of the picketing or threat to picket not only the persons directly involved in the dispute but their suppliers and customers. The picketing in this case, limited to one picket, was confined to the actual place of business involved in the dispute.

All of which points to the conclusion not only that the decrees here under review were improper, no matter by what standard measured, but that they constituted so wanton an invasion of the constitutional rights involved, that if not reversed by this Court, threatens to undermine the entire fabric of our constitutional law in this field. The minority of the Court of Appeals of the State of New York have certainly not overstated the case when they said:

> "In this small lawsuit, there is at hazard, just as surely as in great strifes that sweep the world, an ancient and inalienable right. If that right cannot find vindication in the courts, it has little chance elsewhere."

Indeed, this lawsuit is only "small" when we consider the size of the business establishments and the number of workers immediately involved. It is not at all a small case when we consider the importance of the rule laid down by the New York Court of Appeals in its application to industry as a whole. The rule of law laid down by the New York courts is not limited to small businesses which may be easily converted into "partnerships". The particular device here involved had to be resorted to because of the existence of the state "Norris-LaGuardia" Act. But there are states in which there are no such statutes; and the State of New York is free to repeal this statute at any time. And the New York Court of Appeals has already declared that the existing statute does not apply to cases in which a strike is called for an "objective" which the courts consider "unlawful" or "improper",—which, again, is a matter of state law. If, therefore, the constitutional

guarantees of freedom of speech and freedom of the press cease whenever a state, either by statute or through interpretation of its common law by the courts, declares a certain economic objective "unlawful", then, indeed, there is an end to peaceful picketing in this industry or in any other, in small establishments as well as in large ones.

The intercession of this Court is therefore urgently required.

CONCLUSION

The decrees under review clearly contravene the constitutional guarantees of freedom of speech and freedom of the press, and should be reversed.

Dated: New York, September, 1943.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH, Petitioners, against GUS ANGELOS, et al., Respondents.	No. 36
CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH, Petitioners, against ELIAS TSAKIRES, et al., Respondents.	No. 37

PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

The argument for respondents as stated on counsel's brief consists of three points:

1. The judgments under review do not forbid picketing generally but only picketing with false signs.

2. The judgments under review are based upon state law which this Court has no power to review.

3. The judgments under review rest on findings of fact which this Court has no power to review.

We shall consider these points in the order stated, and then add some observations on the question not touched upon in the brief for the respondents, but which is the

really important question in the case, namely, the nature of the facts found and their relation to the constitutional question involved.

POINT I

The judgments under review are absolute prohibitions of picketing.

In view of the clear and unequivocal language of the decrees under review, it is difficult to see how anyone can claim that the prohibition of picketing is limited to picketing with false signs or qualified in any other manner. However, since this assertion is repeated several times throughout the brief for respondents, we desire to call the attention of the Court to the fact that not only is the language of the decrees under review absolute and unqualified, but that the entire discussion in the New York Court of Appeals would have been meaningless if these decrees had been construed by that court as being limited to picketing with false signs. That the minority of the court understood the decrees to prohibit all picketing, and understood the opinion of the majority of the Court of Appeals as approving decrees which prohibit all picketing, is clear from the statement of the minority in their opinion, that:

> "If the picketing described in those findings, herein quoted verbatim, is unlawful, then picketing has been absolutely and completely outlawed in this State."

Indeed, no one can come to any other conclusion, since, as already stated, a construction of the decrees under review as prohibiting only picketing with false signs would have rendered absurd the elaborate discussion of the majority of the Court of Appeals in their effort to justify the affirmance of these decrees. It must be borne in mind that Section 876-a, the non-application of which the elaborate argument of the majority of the Court of Appeals

was intended to prove, does not stand in the way of the prohibition of picketing with false signs. The paragraph of that section dealing with the subject of picketing merely provides that the injunction decree in a labor dispute must not prohibit—

> "Giving publicity to and obtaining or communicating information regarding the existence of, or the facts in, any dispute, whether by advertising, speaking, picketing, patrolling any public street or any place where any person or persons may lawfully be, or by any other method *not involving fraud*, violence, or breach of the peace." (Emphasis supplied throughout.)
>
> *Civil Practice Act* (*New York*) Section 876-a, subd. 1, (f) (5).

It is therefore clear that the whole elaborate argument in the Court of Appeals with respect to the applicability or non-applicability of Section 876-a only became necessary because the decrees here under review prohibited, and were construed by the Court of Appeals to prohibit, *all* picketing, with *any* signs, truthful or untruthful. And anyone familiar with the New York decisions knows that the prohibition of picketing with untruthful signs is of daily occurrence in the courts of that state, notwithstanding the existence of Section 876-a. And the only time the applicability or non-applicability of that section is discussed in the reported cases, is in connection with decrees which prohibit peaceful picketing. Such, indeed, were the cases relied upon by the majority of the Court of Appeals in order to justify their conclusion that the cases here under review did not involve labor disputes, and that Section 876-a was therefore inapplicable.

The decrees under review must therefore be assumed to forbid, as their wording expressly states, *all* picketing, with *any* kind of signs, or without signs.

POINT II

The decisions under review are not based upon any construction of state law in the sense which would make the decisions not reviewable by this Court.

We must frankly confess our inability to understand the claim of counsel for the respondents, that the decisions under review turn upon a question of state law, and are therefore not reviewable by this Court. Of course, the New York Court of Appeals, like every other state court, makes its decisions on the basis of state law, either statutory or common. If the mere fact that the state court decided a point of state law were fatal to a review by this Court, this Court could never review any decision of a state court. What the rule of this Court which counsel apparently had in mind really means is, that this Court will not review a decision based on state law which made it *unnecessary* to consider the federal question, and that the federal question was therefore not passed upon.

Clearly, that is not the situation in these cases. The New York Court of Appeals was confronted with two problems in these cases,—a decision of either one in favor of the petitioners would have entitled them to a decision: One was of purely state law, namely, the claimed existence of a labor dispute which would make the decrees herein improper under the provisions of Section 876-a of the New York Civil Practice Act. The other was: Assuming that there was no labor dispute, did the prohibition of *all* picketing infringe on petitioners' constitutional rights of free speech and free press? The Court of Appeals had to consider *both* of these problems, and decide *both adversely* to petitioners, before the decrees under review could be affirmed. And both, the majority and the minority of that court, did consider and pass upon both questions. The minority held in favor of the petitioners on both questions: while the majority held against petitioners on both ques-

tions,—*the adverse decision on the federal question being absolutely necessary to the affirmance of the decrees under review.*

The Court of Appeals expressly so stated in the supplementary opinion granting petitioners' motion for an amendment of the remittiturs so as to specifically state that the federal question was necessarily passed upon. But even without such specific statement, the very nature of the cases was such that the decrees could not be affirmed on the decision of the question of state law alone, since that merely decided that there was nothing in the state statute making the decrees improper, *but still left open the question whether the decrees did not infringe on petitioners' rights under the First and Fourteenth Amendments to the United States Constitution.*

Needless to say, we do not ask this Court to review the decision of the New York Court of Appeals that these cases did not involve "labor disputes" within the meaning of Section 876-a of the New York Civil Practice Act. That is a question of pure state law with which this Court has no concern. But this Court *is* concerned with, and must review, the question whether or not the prohibition of *all* picketing by a state court infringes upon rights protected by the First and Fourteenth Amendments to the United States Constitution.

POINT III

This Court is not bound by any finding of fact of the state court which is made the basis of a decision infringing upon a federal right.

We have pointed out in our main brief that, as a matter of fact, the decisions under review are not based upon any finding of fact. Counsel for respondents refers to the fact that in one of these cases, the trial court found that one of the pickets had said to a customer that the food in the

particular cafeteria involved in that case was bad. It is a sufficient answer to the claim that the decree in that case was based upon that finding that the decision was the same in the other case, in which there is no such finding. Counsel for the respondents also points to the fact that in the other case, one of the pickets had said to one of the customers that by patronizing that cafeteria he would help Fascism. We respectfully submit that that in itself involves a question of free speech. We believe that it would be a flagrant violation of the right of free speech to prohibit workers engaged in a labor dispute from telling the public, including, prospective customers of the employer, that patronage of such employer would give aid and comfort to Fascists or help the growth of Fascism.

But, we respectfully submit, that even if there were actually findings of fact in both cases upon which the New York courts based their decisions, this Court would be free to examine the record to see whether those findings were well-founded; and it would be for this Court to decide, first, whether the findings were well-founded, and, second, whether, if well-founded, they furnish a proper basis for the decrees under review. This rule, as pointed out in our main brief, is so basic in our constitutional law as to hardly require any extended citation of authority.

In our main brief, we have cited and quoted from a number of cases dealing with the subject, showing the rule to be as old as the question itself. We desire to add here that one of the two cases from this Court cited by counsel for the respondents, a very recent case, reaffirms this rule. In that case this Court held that upon a record containing only the judgment roll this Court will presume that there was substantial evidence to sustain the state court's decree,—clearly implying that when the record of the case is before the Court, this Court will decide for itself the questions of fact as well as the questions of law.

Neblett v. *Carpenter*, 305 U. S. 297.

POINT IV

This Court determines what state of facts warrants the invasion or impairment of the constitutional rights of free speech and free press.

This brings us to the real questions in the case:

First,—*Who is to decide the meaning and extent of the rights of free speech and free press guaranteed by the Constitution?*

Second,—*Has anything been shown in this case which would warrant the glaring invasion of those rights involved in the decrees under review?*

We respectfully submit that there can be only one answer to the first question,—that which has been given by this Court from the very beginning of its existence, namely, that under the Constitution this Court has the ultimate power, as against state courts, to decide the meaning and extent of federal rights as well as all questions of federal law.

Martin v. *Hunter's Lessee*, 1 Wheat. 304,

And the second question must be answered in the negative, since this Court has repeatedly decided that only very grave and serious reasons will justify an invasion or impairment of the rights of free speech and free press. Counsel for the respondents cites the recent case of *Hotel & Restaurant Employees Union* v. *Wisconsin Employment Relations Board*, as if this Court had, in that case, narrowed or in some way detracted from the principles as laid down in the cases cited by us in our main brief. But such is clearly not the case. In that case, as well as in the even more recent *Barnette* case, this Court has not only stood firm upon the principle of the cases cited by us in our main brief, but added to the force of those decisions.

In the *Wisconsin Employment Relations Board Case*, this Court affirmed a decision of the Wisconsin courts which approved a cease and desist order of the Wisconsin Employment Relations Board directed against a labor union. But there is nothing either in the facts or in the opinion of this Court in that case that in any way derogates from the principles contended for here. In that case there was a great amount of violence. But notwithstanding the presence of great violence, the order upheld by this Court did not prohibit peaceful picketing. *And it was because the order did not prohibit peaceful picketing that the decision of the state courts was affirmed by this Court.*

Mr. Justice Frankfurter, in giving the unanimous opinion of this Court, went to great pains to point out, as the *ratio decidendi* of this Court's decision that the highest court of the State of Wisconsin had construed the order in question to be a prohibition of picketing accompanied by violence, and as not in any way impairing the right of peaceful picketing. Said he:

> "The center of attack against the order is that, as enforced by the Wisconsin courts, it enjoins peaceful picketing. * * * What is before us, therefore, is not the order as an isolated self-contained writing, but the order with the gloss of the Supreme Court of Wisconsin upon it. *And that court has unambiguously rejected the construction upon which the claim of the petitioners rests.*
>
> That order forbids only violence, *and that it permits peaceful picketing by these petitioners is abundantly clear by the expressions of the court.*"
>
> *Hotel & Restaurant Employees Union* v. *Wisconsin Employment Relations Board*, 315 U. S. 437, 440-441.

The *Barnette* case,—the last case in which the subject of the First and Fourteenth Amendments was before this Court,—presented a much more serious problem, because

that case involved an act of a state legislature regulating a matter which in itself was clearly one of state regulation. But the very strong considerations militating against interference with a state regulation of a local matter did not weigh in the balance when they collided with the guarantees of the First and Fourteenth Amendments to the United States Constitution. In the opinion in that case, delivered by Mr. Justice Jackson, this Court said:

> "They (i. e., the rights of free speech, free press, free assembly, and free worship) are susceptible of restriction only to prevent *grave and immediate danger* to interests which the state may lawfully protect."
>
> *West Virginia State Board of Education* v. *Barnette*, ... U. S. ....., 87 Law. Ed. 1171, 1179.

The fact that Mr. Justice Jackson delivered the opinion of the Court in that case is significant, since, as pointed out in our main brief, it was some language used by Mr. Justice Jackson in the *Wohl* case that was apparently construed by the New York courts as intended to weaken earlier decisions of this Court, and as a go-ahead signal for the invasion of the constitutional rights involved in the cases under review.

The *Barnette* case was decided by a divided court, but the division was not on the question involved in our cases. This is not only evidenced by the fact that Mr. Justice Frankfurter, who dissented in the *Barnette* case, wrote the unanimous opinion of this Court in the *Wisconsin Employment Relations Board* case, but is also made clear by Mr. Justice Frankfurter's opinion in the *Barnette* case itself, in which he took great care to point out that there was no intention on his part to in any way detract from the force of any decision heretofore rendered by this Court on the subject of free speech and free press. Differentiating carefully between conformity in action and the right to express dissent, he said:

"Compelling belief implies denial of opportunity to combat it and to assert dissident views. Such compulsion is one thing. Quite another matter is submission to conformity of action, while denying its wisdom or virtue, *and with ample opportunity for seeking its change or abrogation.*"

West Virginia State Board of Education v. *Barnette*, ... U. S. ....., 87 Law Ed. 1171, 1187.

It is because free speech and a free press are fundamental necessities of change in law, institutions, or economic conditions, that that right must be carefully guarded against any insidious invasion. The necessity for both in labor disputes, including particularly picketing, has been made a basic principle of our constitutional law by the uniform tenor of the recent decisions of this Court. On that principle we take our stand.

Dated, October, 1943.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1942.

No. 804. 37

CAFETERIA EMPLOYEES UNION, LOCAL 302 and WILLIAM MESEVICH,

Petitioners,

AGAINST

ELIAS TSAKIRES, KALLIS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARY YORWICK, JAMES LOIZIDES, and LOUIS LOIZIDES,

Brief in Opposition to Petition for Writ of Certiorari.

ABRAHAM MICHAEL KATZ,
Of Counsel for Respondents.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH, *Petitioners*, AGAINST ELIAS TSAKIRES, KALLIS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARY YORWICK, JAMES LOIZIDES, and LOUIS LOIZIDES.	No. 904.

Brief in Opposition to Petition for Writ of Certiorari.

POINT I.

The case involves nothing in connection with rights guaranteed by the Federal Constitution.

The Court of Appeals of New York State has affirmed the Appellate Division of the Supreme Court of New York State, which affirmed a judgment for the respondents, granted by Special Term. By said judgment, the Union has been enjoined from picketing the respondents' restaurant in the Borough of Bronx, New York City.

The business is conducted by the respondents, without any outside help whatever. They are all partners. It

has so been found by the Special Term, and the Appellate Division made no new findings of fact. The Court of Appeals was therefore bound by those findings.

There was no question involved here of the slightest dissatisfaction with condition of labor, wages or hours, or with anything at all. This union took it upon itself, as a sort of tutelary angel, to picket these respondents' restaurant, carrying signs telling the public that the respondents were unfair to organized labor. Obviously this was untrue, because no one was employed by the respondents. In fact, a union is composed of employees and not of owners, and it is difficult to see what object the union had in picketing these respondents, except to harass them. As was aptly said by Hon. Peter P. Smith, Justice, in *Zweibon* v. *Goldberg, et al.* (20 N. Y. Supp. 2nd, 272, 273) (not officially reported):

> "'The picketing which is being resorted to in this case must be restrained because the signs are untruthful, deceptive and misleading. The reading on the placards being carried by pickets is as follows, 'Please do not patronize this place, carpets and linoleum being done by non-union labor.' The plain meaning sought to be conveyed to the public by the legends on the signs is that plaintiff, in the conduct of his business, employs persons who are not members of any union of employees. The truth is, however, that plaintiff employs no one at all; he employs no labor, either non-union or union. He himself does all the work in connection with his business; he conducts a 'one-man business.' Under such circumstances, there can be no 'labor dispute' as that term is commonly understood. Civil Practice Act, §876-a, subdivision 10 (c). The obvious purpose of the picketing in which defendants are engaged is to create in the minds of the public

> the false impression that plaintiff is employing non-union labor. Such picketing is a libel upon plaintiff and where there is no labor dispute it must be enjoined. *Thompson* v. *Bockhout*, 273 N. Y. 390, 7 N. E. 2nd 674; *Baillis, et al.* v. *Fuchs, etc.*, 2nd Dept., 258 App. Div. 919, 16 N. Y. Supp. 2nd 724."

Our Constitution does not give one, under the guise of the guarantee of freedom of speech, the right and freedom to misrepresent and libel people in business, who choose to run it without outside help. This is a small business, each partner doing his bit to eke out a livelihood, and to contribute to the welfare of the partnership. Picketing in a case of this kind can have as its aim only the ruination of a small business, without any gain either to the public, labor or the union. Surely the object of such picketing cannot be to have the owners join the union.

As was stated in *National Labor Relations Board* v. *Eansteel M. Corp.*, 306 U. S. 240, 59 S. Ct. 490, 497, 83 L. Ed. .... "There is not a line in the statute to warrant the conclusion that it is any part of the policies of the Act to encourage employees to resort to force and violence in defiance of the law of the land." Of course, force can be actual, or of the more dangerous kind, the subtle force of false propaganda.

It is respectfully submitted that under no reasoning whatever can it be seen why a union may picket a small business that employs no one. No rights of labor are involved. No public policy demands it. No constitutional questions are involved. It can only serve to encourage strikes and hamper the war effort.

CONCLUSION.

Since there are no constitutional questions involved, and no public policy of the land involved, the petition for a writ of certiorari should be denied.

Dated: New York, May 1, 1943.

Respectfully submitted,

ABRAHAM MICHAEL KATZ,
Of Counsel for the Respondents,
261 Broadway,
New York City.

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IN THE

Supreme Court of the United States

October Term, 1942.

No. 803. 36

CAFETERIA EMPLOYEES UNION, LOCAL 302 and WILLIAM MESEVICH,

Petitioners,

AGAINST

GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLONGIS, HARRY GALATIS, MARY WAAL, and DEMOSTHENES LOIZIDES.

Brief in Opposition to Petition for Writ of Certiorari.

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LOCKE APPEAL PRESS, INC., 65-67 Duane St., N. Y. C., Tel. WOrth-2-0689

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OCTOBER TERM, 1942.

CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH, *Petitioners,*

AGAINST

GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLONGIS, HARRY GALATIS, MARY WAAL, and DEMOSTHENES LOIZIDES.

No. 903.

Brief in Opposition to Petition for Writ of Certiorari.

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The business is conducted by the respondents, without any outside help whatever. They are all partners. It

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There was no question involved here of the slightest dissatisfaction with condition of labor, wages or hours, or with anything at all. This union took it upon itself, as a sort of tutelary angel, to picket these respondents' restaurant, carrying signs telling the public that the respondents were unfair to organized labor. Obviously this was untrue, because no one was employed by the respondents. In fact, a union is composed of employees and not of owners, and it is difficult to see what object the union had in picketing these respondents, except to harass them. As was aptly said by Hon. Peter P. Smith, Justice, in *Zweibon* v. *Goldberg, et al.* (20 N. Y. Supp. 2nd, 272, 273) (not officially reported):

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As was stated in *National Labor Relations Board* v. *Fansteel M. Corp.*, 306 U. S. 240, 59 S. Ct. 490, 497, 83 L. Ed. .... "There is not a line in the statute to warrant the conclusion that it is any part of the policies of the Act to encourage employees to resort to force and violence in defiance of the law of the land." Of course, force can be actual, or of the more dangerous kind, the subtle force of false propaganda.

It is respectfully submitted that under no reasoning whatever can it be seen why a union may picket a small business that employs no one. No rights of labor are involved. No public policy demands it. No constitutional questions are involved. It can only serve to encourage strikes and hamper the war effort.

CONCLUSION.

Since there are no constitutional questions involved, and no public policy of the land involved, the petition for a writ of certiorari should be denied.

Dated: New York, May 1, 1943.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1943.

CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH, *Petitioners*,

AGAINST

GUS ANGELOS, *et al.*, *Respondents*.

No. 36.

CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH, *Petitioners*,

AGAINST

ELIAS TSAKIRES, *et al.*, *Respondents*.

No. 37.

ON WRITS OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

RESPONDENTS' BRIEF.

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ELIAS TSAKIRES, *et al.*,

Respondents.

RESPONDENTS' BRIEF.

I.—Statement of the Case.

Each respondent operates a cafeteria in the Borough of the Bronx employing no outside help at all. Each respondent is a partnership, composed of the *quondam* employer and former employees. The partnership agreements are in writing, and are to be found at folios 256-282 of Case No. 36, and folios 226-249 of Case No. 37.

The petitioners picketed the two cafeterias, with men carrying placards with a legend that the respondents were

unfair to organized labor, and the pickets approached prospective customers and told them that the food in the cafeteria of respondent Angelos was bad, and that by patronizing said cafeteria, customers were aiding the cause of Fascism (fol. 38, Case No. 36 and Case No. 37). No strike had ever been called at either cafeteria (fol. 37, Case No. 36, fol. 37, Case No. 37).

The Supreme Court of the State of New York, Bronx County, granted injunctions against picketing, on the ground that there was no labor dispute, and on the ground that there were no employees in these cafeterias, all being partners, doing their own work.

The injunctions were affirmed by the Appellate Division of the Supreme Court, without opinion, and the Court of Appeals of the State of New York affirmed the Appellate Division, by a divided Court, said higher Court writing a prevailing opinion (Rippey, *J.*), and a dissenting opinion (Desmond, *J.*) (fols. 337-338, Case No. 36).

It is deemed pertinent at this point to cite from the prevailing opinion the quintessence of the rationale of the majority of the Court of Appeals,

> "The facts as found show that the defendants established a picket line at and near the cafeteria on or about April 15, 1939. On April 22, 1939, the plaintiffs in this action formed a partnership in accordance with the provisions of our Partnership statute (Partnership Law, Cons. Laws, ch. 39), and filed a certificate as required by law that it was conducting business at the place indicated. * * *
>
> Upon conflicting evidence it has been found as matters of fact, conclusively binding on this Court, that the plaintiffs were partners and, as such, sole owners and operators of the cafeteria, that the partnership was a valid partnership and that plaintiffs as members of the partnership did all the

work in connection with the cafeteria without any outside assistance. * * *

The mere fact that no strike has been called does not make the picketing unlawful, * * *. Nevertheless, there can be no labor dispute within the meaning of section 876-a unless there is employment (*Baillis* v. *Fuchs*, 283 N. Y. 133, 137). Upon the facts as found in this case, the partnership comes within the reasoning of and is controlled by the decision in *Thompson* v. *Bockhout* (273 N. Y. 390). The partnership was not a legal entity in the sense that its members were employees as in the case of a corporation (*Borough Park Sanitary Live Poultry Market, Inc.* v. *Heller*, 280 N. Y. 481). * * *

Accordingly, the action rests upon the principles of the common law without preliminary compliance with the provisions of 876-a of the Civil Practice Act required.

* * * But a citizen is not required to tolerate peaceful picketing accompanied by untruthful representations, interference with his business, * * * designed to injure or destroy his business whether a labor dispute exists or not (*Busch Jewelry Co.* v. *United Retail Employees' Union*, 281 N. Y. 150, * * *). Unlike the record in the *Wohl* case, there are findings of fact here to sustain the decree. * * *

By no authoritative decision has it been held that such conduct is not subject to judicial restraint. On the contrary, unlawful and coercive conduct will be enjoined where it has been found that such conduct has caused damage and will cause irreparable damage if permitted to continue and the party who is so damaged or threatened to be damaged has no adequate remedy at law. (*Busch Jewelry Co.* v. *United Retail Employees' Union*, *supra*, p. 156.)"

The petitioners would have it that, albeit there was no labor dispute, albeit the signs of the pickets were untruthful and misleading, they should none the less be permitted to picket and injure, and mayhap destroy, the businesses of the respondents, by dint of the constitutional guarantees of freedom of speech and freedom of assembly. The petitioners would have freedom of speech synonymous with freedom to injure and destroy by unfair means.

II.—Summary of Argument.

(a) The injunctions issued herein and affirmed by the Court of Appeals, are in comport with equitable principles, and under a local law of the State of New York.

(b) There is a local question involved under Section 876-a of the Civil Practice Act of the State of New York, as well as under Section 8 of Article 1 of the Constitution of the State of New York, pursuant to which the judgments of the State Court can and should be sustained.

(c) The injunctions issued herein in favor of the respondents do not violate the constitutional guarantees of "Freedom of Speech and Assembly".

III.—Argument.

(a) The injunctions issued by the Supreme Court and affirmed by the Court of Appeals, are in accordance with equity, and interpreted under a local law of the State of New York.

The Court of Appeals, being bound by the findings of fact of the Trial Court, as affirmed by the Appellate Division, interpreted 876-a of the Civil Practice Act of New York State, and found as a matter of law that these cases do not come under its provisions. This involved obviously but a local statute, with which this Court is not, as a rule, concerned, unless it is in conflict with the United States Constitution.

To bring these cases under the aegis of the federal constitution, the petitioners invoke freedom of speech and assembly. No one quarrels with that most democratic and salutary doctrine. However, can freedom of speech and assembly be twisted to mean freedom to assemble and speak in order to injure other citizens who are likewise entitled to the protection of the laws of the land? The rationale of freedom of speech never was intended to cover freedom to vilify and harm. Such a purpose must perforce lead to an absurd result, something Courts never countenance.

Under this so-called freedom of speech, the no-strike pledge elicited by our President from organized labor after the Pearl Harbor attack, was violated 222 times during July, 1942, according to statistics compiled by the National War Labor Board. There were 30 more strikes in July, 1942 than in June, 1942, leading to the loss of countless thousands of labor hours, and thus impeding production.

In the present cases, there never was involved the slightest dissatisfaction with conditions of labor, wages or hours, or with anything at all. This union took it upon itself, as a sort of tutelary guardian, to picket these cafeterias with misleading and inveracious signs and, in one instance at least, to state to the public that the food in the cafeteria was bad. Obviously the signs reading that the respondents are unfair to organized labor were untruthful, because no labor was employed in these cafeterias. In fact, the petitioner being a union of employees, would not even admit owners as members. What possible motive, save to harass and harm the petitioners, could the union have had for picketing in these cases? As was said by Hon. Peter P. Smith, Justice, in *Zweibon* v. *Goldberg, et al.* (20 N. Y. Supp. 2nd, 272, 273 [not officially reported]):

"The picketing which is being resorted to in this case must be restrained because the signs are untruthful, deceptive and misleading. The reading on the placards being carried by pickets, is as follows, 'Please do not patronize this place, carpets and linoleum being done by non-union labor'. The plain meaning sought to be conveyed to the public by the legends on the signs is that the plaintiff, in the conduct of his business, employs persons who are not members of any union of employees. The truth is, however, that plaintiff employs no one at all, he employs no labor, either non-union or union. He himself does all the work in connection with his business; he conducts a 'one man business'. Under such circumstances, there can be no 'labor dispute' as that term is commonly understood. Civil Practice Act, §876-a, subdivision 10(c). The obvious purpose of the picketing in which defendants are engaged is to create in the minds of the public the false impression that plaintiff is employing non-union labor. Such picketing is a libel upon plaintiff and where there is no labor dispute it must be enjoined. *Thompson* v. *Boekhout*, 273 N. Y. 390, 7 N. E. 2nd, 674; *Baillis, et al.* v. *Fuchs, etc.*, 2nd Dept. 258 App. Div. 919, 16 N. Y. Supp. 2nd 724."

As was said in *National Labor Relations Board* v. *Fansteel M. Corp.*, 306 U. S. 240, 59 S. Ct. 490, 497, 83 L. Ed. "There is not a line in the statute to warrant the conclusion that it is any part of the policies of the Act to encourage employees to resort to force and violence in defiance of the law of the land." Of course, force can be actual, or of the more insidious and dangerous kind, the subtle and venific force of false propaganda.

Under no theory can it be seen why a union should be allowed to picket a small business employing no one. No rights of labor are involved. No public policy demands it. No constitutional questions are involved. It can only serve to encourage the baser passions and prejudices.

To sum up, the New York Supreme Court, exercising its equitable jurisdiction and powers, restrained the petitioners herein from doing an unlawful act. The highest Court of the State of New York has affirmed those decisions. The petitioners have been forbidden to mislead the public by untruthful placards. Surely, the Courts have power to do this, and doing so, no legitimate freedom of speech is hampered, but only freedom to harm, injure and libel.

(b) There is only a local question involved, construing Section 876-a of the Civil Practice Act of New York State.

It is well settled that this Court will not review a State Court decision construing or interpreting a statute of its own State.

Neblett v. *Carpenter*, 305 U. S. 297.

It is pellucid from what has been shown thus far that the Supreme Court, as well as the Court of Appeals, merely construed a New York statute, Section 876-a of its Civil Practice Act. Surely this is a local matter. Surely other states may have other sections that might make picketing lawful under all circumstances or conditions. But that is a state and local matter. It is impossible to see how any Federal questions are involved of which this honorable Court should take cognizance.

Under the circumstances, the respondents urge that the decrees having been properly founded upon a local law, they should be in all respects affirmed.

(c) The injunctions herein are not violative of the constitutional guarantees of freedom of speech or assembly.

Nowhere, in the injunctions herein, are to be found prohibitions against distribution of hand bills, of publishing truthful advertisements. The Court merely enjoined picketing in front of the respondents' places of business by false placards. The attempt to spell out a violation herein of the constitutional guarantee of free speech is specious and disingenuous.

It is not gainsaid that honest labor disputes or efforts by labor unions to obtain better working conditions or greater membership is not a proper function of unions. Those are legitimate pursuits of labor unions.

A. F. of L. v. *Swing*, 312 U. S. 321.

But here no such situation exists. No workingman existed over whom the protective zeal of the union could hover. The legends were found to be untruthful. The purpose here was obviously not a legitimate object of a labor union. Here was a partnership. Whether it was indeed a partnership was a question of fact.

Fullam v. *Peterson*, 21 N. Y. Supp. 2nd, 797 (not officially reported).

That fact was decided in favor of the respondents. The Court of Appeals could not disturb such finding. What followed was a natural, logical and legal sequela.

The public, reading the placard of the petitioners, could be led to believe only one thing, to wit, that these respondents were unfair to labor. However, they were partners and employed no labor.

No one can doubt the right of a State Court to interpret and construe the meaning of a State statute so as to prevent the commission of unfair labor practices.

Hotel & Restaurant Employees Union v. *Wisconsin Employment Relations Board*, 315 U. S. 437, 440, 441.

Nor can one assume that our courts of equity have been divested of all power to enjoin an abuse of free speech. Improper uses of the rather broad coverage of the 14th Amendment should not be so insulated as to prohibit justifiable curbs, when it is found that there are actual or threatened abuses of those constitutional privileges. The Courts of the State of New York have long since recognized this principle and recognized the dangers of picketing via misleading and fraudulent legends. Appropriate relief in the form of civil and penal remedies have been afforded.

In fact in §8 of Article 1 of the Constitution of the State of New York we find

> "Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right;"

obviously the New York State Constitution had in mind that freedom of speech should never be abused.

People v. *Jenkins*, 255 N. Y. 637;
People v. *Bellows*, 281 N. Y. 67;
Canepa v. *John Doe*, 277 N. Y. 52.

In contradistinction to the situation that prevailed in the case of *Bakery and Pastry Drivers' Union* v. *Wohl*, 315 U. S. 769, the petitioners here resorted to false and misleading placards, which was found as a fact by the trial court. It is respectfully submitted that such findings of fact, based on competent evidence should not be disturbed. The petitioner has not been denied free speech. It has

been curbed in its abuse of free speech. It has been forbidden to mislead the public and harm the respondents under the guise of free speech. We do not imagine that the petitioner contends that the Constitution of the United States authorizes it to deceive the public. Can it be heard to complain that it has been forbidden to disseminate false propaganda or untruthful literature? Surely the petitioner has no grievance of which this or any Court can take serious cognizance. The State Court applied the principle of *"Sic utere tuo ut alienum non laedas"*, and has safeguarded the property rights of the respondents, without depriving the petitioner of any right except that of injuring and deceiving. Unions protect workers and not owners. The respondents are owners and not workers, and the petitioner has no legitimate object in picketing such a business. Both legally, morally and factually, the injunction decrees herein were properly granted and properly affirmed by the Court of Appeals of New York State.

CONCLUSION.

The decrees under review do not contravene the constitutional guarantees of freedom of speech and assembly, or freedom of the press, and should therefore be affirmed.

Dated: New York, October, 1943.

Respectfully submitted,

ABRAHAM MICHAEL KATZ,
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IN THE

Supreme Court of the United States

OCTOBER TERM 1942

CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH,
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against
GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WAAL and DEMOSTHENES LOIZIDES.

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No. 904 37

PETITION FOR REHEARING OF APPLICATION FOR WRITS OF CERTIORARI

LOUIS B. BOUDIN,
Of Counsel for Petitioners.

IN THE

Supreme Court of the United States

OCTOBER TERM 1942

CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH, *Petitioners,* against GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WAAL and DEMOSTHENES LOIZIDES.	No. 903.
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PETITION FOR REHEARING OF APPLICATION FOR WRITS OF CERTIORARI

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioners, Cafeteria Employees Union, Local 302, and William Mesevich, respectfully pray for a rehearing of the petitions heretofore made by them in the above matters, which petitions prayed that writs of certiorari issue to review orders of the Court of Appeals of the State of New York affirming orders of the Appellate Division of the Supreme Court of the State of New York, in and for the First Department, affirming judgments of

the Supreme Court of the State of New York, County of the Bronx, in favor of certain plaintiffs and against these Petitioners, whereby Petitioners were enjoined and restrained from stationing pickets at or near certain cafeterias or restaurants located in the Borough of the Bronx, City of New York, State of New York.

And in support of this petition your Petitioners respectfully show to this Honorable Court:

I. On May 17, 1943, this Court entered the following order in the above matters, as your Petitioners are informed and verily believe:

> "The petition for writs of certiorari in each case is denied on the ground that it does not appear from the record that the Federal question presented by the petition was properly presented to or expressly passed on by the New York Court of Appeals."

II. Your Petitioners respectfully submit that the said order was made by this Court under a misapprehension of the facts, in that the Federal question presented by the petitions heretofore filed by your Petitioners was properly presented to and expressly passed upon by the New York Court of Appeals, and the said fact appears in the respective records of the said cases submitted with the said petitions, as will appear from the facts hereinafter stated, and the Court of Appeals has agreed to so certify.

III. Each of the said records show that in the notice of appeal to the Court of Appeals of the State of New York from the order of affirmance made by the Appellate Division of the Supreme Court of the State of New York, the Federal question was specifically raised, in that each of the said notices of appeal contained the following, to wit:

> "PLEASE TAKE FURTHER NOTICE that the appeal is taken upon the following ground, among others:

> That said judgment and order are violative of the Constitution of the United States, particularly Amendments I, V and XIV thereof, and the Constitution of the State of New York, particularly Article I, Section 8, thereof."

The said statement is printed in the record of the case entitled below, "Gus Angelos, et al. v. William Mesevich, etc." (No. 903 in this Court), at page 101 thereof, and in the case entitled below, "Gus Angelos, et al. v. William Mesevich, etc." (No. 904 in this Court), at page 104 thereof.

IV. The Federal question was passed upon by the Court of Appeals of the State of New York, and was, in fact, one of the principal points upon which the said Court divided, as may be seen from the following:

The opinion of the majority of the Court of Appeals, written by Associate Judge Rippey, contains the following language, to wit:

> "It has been found by the lower courts that the picketing of the World Cafeteria was at all times orderly and peaceful and that no acts of violence had been threatened or committed by the defendant union. *The defendant had the constitutional right accurately and truthfully and without violence, force or coercion, or conduct otherwise unlawful or oppressive to make their grievances known to the public.* (*Wohl* v. *Bakery & Pastry Drivers & Helpers Local 802*, supra.) But a citizen is not required to tolerate peaceful picketing accompanied by untruthful representations, interference with his business or coercive conduct designed to injure or destroy his business whether a labor dispute exists or not."

(Record in *Angelos* case, at pp. 116-117. The decision in the *Tsakires* case specifically refers to the opinion in the *Angelos* case, the two cases having been heard and decided together.)

This clearly shows that the Federal question was considered by the Court of Appeals, and that the decision

proceeded upon the theory that peaceful picketing with truthful signs, which is the Federal right involved, is considered by the State Court to be an "interference" with business or "coercive conduct designed to injure or destroy" the business of an employer. This is not changed by the fact that the majority of the Court refers to peaceful picketing with "untruthful" signs, since, as a matter of fact, the signs actually used were not untruthful; and, besides, the judgment appealed from did not differentiate between picketing with truthful and picketing with untruthful signs, and prohibited *all picketing with whatsoever signs.*

Both the fact that the Federal question was actually considered and passed upon, and that it was decided not only adversely to the claim of Petitioners, but also contrary to controlling decisions of this Court becomes more apparent from the dissenting opinion written by Associate Judge Desmond, on behalf of three members of the Court of Appeals, including Chief Judge Lehman. In that opinion the minority of the Court of Appeals say, among other things:

> "Even if this injunction were not unlawful under section 876-a and under our decisions, early and late, even if there were no labor dispute and no case growing out of a labor dispute, this ban against peaceful picketing would still be violative of the Federal Bill of Rights. Most plainly is this pointed out in *Bakery & Pastry Drivers & Helpers Local 802* v. *Wohl* (315 U. S. 769), where the Supreme Court noted (p. 774) that the New York courts had seemed to assume that the legality of the injunction followed from a determination that a labor dispute was not involved. 'Of course,' said the Supreme Court, 'that does not follow: one need not be in a "labor dispute" as defined by state law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive.' (See, also, *Thornhill* v. *Alabama*, 310 U. S. 88, 100; *Milk Wagon*

Drivers Union v. *Meadowmoor Dairies, Inc.*, 312 U. S. 287, 296-298; *American Federation of Labor* v. *Swing*, 312 U. S. 321.) Nothing is now better settled than that picketing is an exercise of the constitutional right of free speech, that it needs no authorization from the State, which may in proper case regulate picketing, but may never forbid it."

V. The Federal question was necessarily passed upon by the Court of Appeals of the State of New York, since it was properly raised in that court as well as in the Appellate Division of the Supreme Court. Petitioners are informed that some doubt has arisen in the minds of the Justices of this Court as to the possibility that the New York Court of Appeals may not have been in a position to pass upon the Federal question because of some procedural defect in the manner of the presentation of the said question under the laws of the State of New York, because of the concluding statement of the opinion of the majority of the Court of Appeals, reading: "No exceptions appear in the record which raise any other question of law open for our further consideration." The said statement, we are informed and verily believe, refers to questions other than those actually raised and passed upon by the Court, including the Federal question, as is indicated by the word "other", and relates particularly to possible questions of admission and exclusion of evidence, since no exceptions are necessary under the laws of the State of New York for the purpose of raising the Federal question here involved. The Federal question arises from the form of the judgment, and would not have arisen if the judgment only restrained picketing accompanied by violence or false signs. In this connection the attention of the Co is respectfully called to the fact that the Judgments involved, and the Decisions upon which they were entered, containing findings of fact and conclusions of law, were entered several days after the cases were finally submitted to the Justice who tried the same, as the records show;

and under the laws of the State of New York no special exception is necessary either to a finding of fact or conclusion of law made after the final submission of a case in order to raise any question presented thereby. Section 445 of the Civil Practice Act of the State of New York provides as follows:

> "Subject to the provisions of section four hundred forty-six of this act, an exception shall be deemed to have been taken by the party adversely affected to every ruling either before or after the cause is finally submitted, where such party, at the time when such ruling is sought or made, makes known to the court, judge or referee his position thereon by objection or otherwise.
>
> Where an issue of fact is tried by a referee or by the court without a jury an exception shall be deemed to have been taken by the party adversely affected to the granting or refusal of every request to find, and to every ruling upon a question of law made after the cause is finally submitted."

The exceptions in the following section, referred to in the section just quoted, refer solely to the charge of the Court and request to charge in cases tried before a jury.

VI. Since the making of the order by this Court on May 17, 1943, Petitioners have moved in the Court of Appeals of the State of New York for an order requesting the return by the Supreme Court of the State of New York, County of the Bronx, to the Court of Appeals, of the Remittiturs of the last named court, and for the amendment of the same so as to specifically state that the Federal question here involved had been properly raised in the State Courts, and actually passed upon by Court of Appeals. The said motion was granted by the Court of Appeals on May 27, 1943, as is shown by the following memorandum published in the New York Law Journal, the official publication for the First Judicial Department of the Supreme Court of the State of New York, on May 28, 1943:

"Motion to amend remittiturs granted. Return of remittiturs requested, and when returned, they will be amended, by adding thereto the following: 'Upon this appeal there was *presented and necessarily passed upon* a question under the Constitution of the United States, viz.: The defendants argued that the injunction granted herein violated the rights of freedom of speech and assembly guaranteed by the First and Fourteenth Amendments of the Constitution of the United States. This Court held the injunction aforesaid did not violate the rights of freedom of speech and assembly guaranteed by the First and Fourteenth Amendments of the Constitution of the United States.'"

VII. Petitioners further submit that the question sought to be reviewed in this Court is of the greatest public importance, not only because of the nature of the question itself but also because a failure to review the same and to maintain the construction of the First and Fourteenth Amendments to the Constitution of the United States as laid down by this Court in its decisions particularly mentioned in the dissenting opinion of the minority of the Judges of the Court of Appeals of the State of New York will unsettle an important branch of our constitutional law, and will affect not only the State of New York but the entire country. The great importance of the question is specifically pointed out in the opinion of the minority of the Court of Appeals in the following forceful language with which that opinion concludes:

> "In this small lawsuit there is at hazard, just as surely as in great strifes that sweep the world, an ancient and inalienable right. *If that right cannot find vindication in the courts, it has little chance elsewhere.*"

VIII. Petitioners are informed that the said Remittiturs have not as yet been physically amended by the Court of Appeals, for the reason that the same have not as yet been returned to it by the lower court where they are now physically lodged. Petitioners therefore pray for permis-

sion to file with this Court, in support of this petition and of the original petitions for writs of certiorari, certified copies of the amended Remittiturs, when the same shall have been amended by the Court of Appeals, and a certification thereof obtainable.

WHEREFORE, your Petitioners pray that an order be made by this Court directing a rehearing of the petitions for writs of certiorari heretofore filed in the above matters, and that upon such rehearing the said petitions be granted and the writs issue as therein prayed for.

Dated: New York, June 3, 1943.

LOUIS B. BOUDIN,
Of Counsel for Petitioners.

20 West 43rd Street,
New York City.

I, the undersigned, counsel for the Petitioners in the above entitled matters,

DO HEREBY CERTIFY that the foregoing petition is presented in good faith and not for delay.

Dated: New York, June 3, 1943.

LOUIS B. BOUDIN,
Of Counsel for Petitioners.

20 West 43rd Street,
New York City.

SUPREME COURT OF THE UNITED STATES.

Nos. 36-37.—October Term, 1943.

Cafeteria Employees Union, Local 302, and William Mesevich, Petitioners, 36 *vs.* Gus Angelos, John Harris, Lucas Harris, et al.	On Writs of Certiorari to the Court of Appeals of the State of New York.
Cafeteria Employees Union, Local 302, and William Mesevich, Petitioners, 37 *vs.* Elias Tsakires, Kallis Constantinon, Christ Lymbouris, et al.	

[November 22, 1943.]

Mr. Justice Frankfurter delivered the opinion of the Court.

We brought these two cases here to determine whether injunctions sanctioned by the New York Court of Appeals exceeded the bounds within which the Fourteenth Amendment confines state power. 319 U. S. 778. They were argued together and, being substantially alike, can be disposed of in a single opinion.

We start with the Court of Appeals' view of the facts. In No. 36, petitioners, a labor union and its president, picketed a cafeteria in an attempt to organize it. The cafeteria was owned by the respondents, who themselves conducted the business without the aid of any employees. Picketing was carried on by a parade of one person at a time in front of the premises. The successive pickets were "at all times orderly and peaceful". They carried signs which tended to give the impression that the respondents were "unfair" to organized labor and that the pickets had been previously employed in the cafeteria. These representations were treated by the court below as knowingly false in that there had been no employees in the cafeteria and the respondents were "not unfair to organized labor". It also found that pickets told prospective customers that the cafeteria served bad food, and that by "patronizing" it "they were aiding the cause of Fascism".

The circumstances in No. 37 differ from those in No. 36 only in that pickets were found to have told prospective customers that a strike was in progress and to have "insulted customers . . . who were about to enter" the cafeteria. Upon a finding that respondents required equitable relief to avoid irreparable damages and that there was no "labor dispute" under the New York analogue of the Norris-LaGuardia Act (§ 876-a of the New York Civil Practice Act), the trial court enjoined petitioners in broad terms from picketing at or near respondents' places of business. The decrees were affirmed by the Appellate Division (264 App. Div. 708), and were finally sustained by the Court of Appeals, its Chief Judge and two Judges dissenting. 289 N. Y. 498, 507.

In *Senn* v. *Tile Layers Union*, 301 U. S. 468, this Court ruled that members of a union might, "without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution." 301 U. S. at 478. Later cases applied the *Senn* doctrine by enforcing the right of workers to state their case and to appeal for public support in an orderly and peaceful manner regardless of the area of immunity as defined by state policy. *A. F. of L.* v. *Swing*, 312 U. S. 321; *Bakery Drivers Local* v. *Wohl*, 315 U. S. 769. To be sure the *Senn* case related to the employment of "peaceful picketing and truthful publicity". 301 U. S. at 482. That the picketing under review was peaceful is not questioned. And to use loose language or undefined slogans that are part of the conventional give-and-take in our economic and political controversies—like "unfair" or "fascist"—is not to falsify facts. In a setting like the present, continuing representations unquestionably false and acts of coercion going beyond the mere influence exerted by the fact of picketing, are of course not constitutional prerogatives.

But here we have no attempt by the state through its courts to restrict conduct justifiably found to be an abusive exercise of the right to picket. We have before us a prohibition as unrestricted as that which we found to transgress state power in *A. F. of L.* v. *Swing*, *supra*. The Court here, as in the *Swing* case, was probably led into error by assuming that if a controversy does not come within the scope of state legislation limiting

the issue of injunctions, efforts to make known one side of an industrial controversy by peaceful means may be enjoined. But, as we have heretofore decided, a state cannot exclude working men in a particular industry from putting their case to the public in a peaceful way "by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him". *A. F. of L.* v. *Swing*, 312 U. S. at 326.

The present situation is thus wholly outside the scope of the decision in *Drivers Union* v. *Meadowmoor Co.*, 312 U. S. 287. There we sustained the equity power of a state because the record disclosed abuses deemed not episodic and isolated but of the very texture and process of the enjoined picketing. But we also made clear, "that the power to deny what otherwise would be lawful picketing derives from the power of the states to prevent future coercion. Right to free speech in the future cannot be forfeited because of dissociated acts of past violence". 312 U. S. at 296. Still less can the right to picket itself be taken away merely because there may have been isolated incidents of abuse falling far short of violence occurring in the course of that picketing.

The judgments must be reversed and the causes returned to the state court for further proceedings not inconsistent with this opinion.

So ordered.